

No. 12,406

In the United States Court of Appeals
for the Ninth Circuit

CLARK SQUIRE, COLLECTOR OF INTERNAL REVENUE,
APPELLANT

v.

SUMNER RHUBARB GROWERS' ASSOCIATION, A COOPERA-
TIVE AGRICULTURAL CORPORATION, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

REPLY BRIEF FOR THE APPELLANT

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FILED

APR 2 1933

W. P. O'BRIEN

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for the Ninth Circuit**

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CLARK SQUIRE, COLLECTOR OF INTERNAL REVENUE,
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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON*

REPLY BRIEF FOR THE APPELLANT

Some matters discussed in the brief filed herein on behalf of the Sumner Rhubarb Growers' Association need clarification.

First. Counsel for the taxpayer seem to be confused as to organizations which are exempt from income tax under Section 101(1) of the Internal Revenue Code and organizations which are exempt from the income tax under Section 101(12).

It is agreed, as taxpayer states (Br. 2-3), that the taxpayer is a cooperative association under the laws of the State of Washington. It may be conceded, as

the taxpayer contends (Br. 3-7), that it also is an "agricultural" organization within the broad meaning of that term. But that does not answer the first question involved here, i.e., whether the taxpayer is exempt from income tax under Section 101(1) of the Code.

Whether the taxpayer is so exempt is a federal question. It does not follow that a bona fide cooperative agricultural association or organization under state law is automatically exempt under Section 101(1) from payment of the federal income tax. The burden is upon the taxpayer claiming such exemption to prove that it is the type of "labor," "agricultural" or "horticultural" to which the statute applies. This the taxpayer has not done. Without any authority or basis therefor, other than the fact that it was a bona fide cooperative under the laws of the State of Washington, the taxpayer concludes that (Br. 3)—

Since the Sumner Rhubarb Co-operative is an agricultural or horticultural organization and is exempt from income tax under section 101(1), then it is therefore exempt from social security tax. The whole question is as simple as that.

Later in its brief, under the heading "Services Here Involved Would Constitute Agricultural Labor Within the Meaning of the Statute" (p. 11), the taxpayer quotes from Section 29.101(1)-1 of Treasury Regulations 111 dealing with exemption under Section 101(1) of the Code, and adds (p. 15):

The purpose and object of the Rhubarb Association is just exactly that which the Treasury regulation says should be an agricultural and horticultural organization, exempt from income tax.

Not only the taxpayer's "purpose and object," which are not controlling, but also its actual operations clearly exclude it from the class of organizations cov-

ered by this provision of the Regulations. (1) It is not an organization having no net income inuring to the benefit of any member. On the contrary, all of its net income is distributable to its members. (2) The record does not show that it engages in any activities which could be classed as educational or instructive in character. Its activities are purely commercial, although carried on in cooperative form, and are for the financial rather than educational benefit of its members. (3) Nor is there anything in the record to show that any object or activity of the taxpayer is directed to the betterment of the conditions of those engaged in the growing of rhubarb or any other agricultural commodity, either members or non-members (other than the financial betterment of its members), improvement of the grade of their product, or the development of a higher degree of efficiency in their occupation. It differs radically in all of these essential respects from the agricultural fair association which was held exempt in I.T. 2325, V-2 Cum. Bull. 63 (1926), and the Farmers Educational and Cooperative State Union of Nebraska which was held exempt in *Farmers Union State Exchange v. Commissioner*, 30 B.T.A. 1051. Compare A. R. M. 79, 3 Cum. Bull. 235 (1920), denying exemption under this provision to a register association organized for profit, its purpose and activities being to render a service to the breeders of pure bred live stock.

This confusion is emphasized in the discussion (Br. 8-11) under the heading that the record does establish that the taxpayer was exempt under Section 101(12) of the Code.¹ Aside from its criticism of the Commis-

¹ The observations (Br. 8-9) concerning the use of the word "institution" instead of "organization" at the trial by counsel for the Collector is without point. The taxpayer's exempt status, regardless of the statutory provision under which it is claimed, depends upon the facts and not upon terminology.

sioner for refusing to recognize its exempt status in adjusting its claims for refund of social security taxes,² the taxpayer in this discussion points to no facts (other than that it was a bona fide agricultural cooperative under state law) upon which it can be held to be exempt from federal income tax under Section 101(12). But with respect to the statute, the taxpayer states (Br. 9-10):

Said section was in effect prior to section 101(1) and it read word for word like section 101(12) now reads. It is obvious that Congress had no intention of decreasing the special privileges granted agricultural and horticultural organizations under section 103(12), but on the other hand, intended to increase the special tax exemption rights of agricultural and horticultural organizations by using such a broad exemption as, and I quote, "labor, agricultural or horticultural organizations." Merely because Congress carried the old section 103(12) over, and called it section 101(12) should certainly not restrict the tax exemption rights of an agricultural or horticultural organization. If Congress had intended to except such agricultural or horticultural organizations as the Rhubarb Growers' Association from the general exemption 101(1), then it would have done so in that section *Birmingham v. Ruckers Breeding Farm*, supra. It is reasonable, therefore, to say that it was the intention of the legislature to extend rather than limit exemptions of agricultural and horticultural organizations by carrying over the old section 103(12), and making it 101(12). Just as in the case at bar and as shown by the letter from assistant commissioner Self, certain rights had been ac-

² This criticism is wholly unjustified. Its claims were based in part upon its alleged exempt status. The burden was upon it to establish this fact, and in view of its refusal or inability to furnish the necessary evidence, the Commissioner was fully justified in declining to recognize its exempt status. But regardless of the merit of its criticism, the same burden rested upon the taxpayer in this proceeding.

quired by exemptions allowed such organizations as the appellee, and rather than run the risk of limiting or restricting, Congress carried over the old law in addition to adding the all-inclusive section 101(1).

As pointed out in the brief heretofore filed on behalf of the Collector of Internal Revenue (pp. 12-13), the first general income tax law enacted in 1913 soon after adoption of the Sixteenth Amendment to the Constitution excepted "labor," "agricultural," and "horticultural" organizations from the income tax, and the language exempting such organizations has continued unchanged through all subsequent enactments. On the other hand, the first provision for exempting cooperative agricultural organizations was enacted as Section 11(a) Eleventh of the Revenue Act of 1916, c. 463, 39 Stat. 756. It was changed by Section 231(11) of the Revenue Act of 1921, c. 136, 42 Stat. 227, and again by Section 231(12) of the Revenue Act of 1926, c. 27, 44 Stat. 9, in which form it now appears in the Code.

The taxpayer was organized in 1930 (R. 72), and in 1931 the Commissioner ruled that it was exempt from federal income tax under Section 103(12) of the Revenue Act of 1928, c. 852, 45 Stat. 791 (R. 36). The taxpayer never claimed exemption under Section 101(1) of the Code or corresponding provision of earlier Revenue Acts prior to the filing of its claims for refund of social security taxes. In any event, the Commissioner certainly never recognized it as exempt under that provision. Its claims for refund (R. 7-21) are based upon the ground that the taxpayer was exempt under Section 101(1) of the Code and upon the further ground that the services for which the wages in question were paid constituted "agricultural labor" within the meaning of the amendments to the Social Security Act.

The letter of the Deputy Commissioner to the taxpayer's accountants dated June 24, 1948 (R. 44-48), states that by Bureau letter dated February 6, 1948, the taxpayer was advised that action on its claims was being held in abeyance pending a determination whether it was exempt under Section 101(1); that information on file disclosed that in a Bureau letter addressed to the Association on January 15, 1948, it was held that since the information furnished indicated that the activities of the Association consisted primarily of marketing agricultural products for its members, and in view of the provisions of Section 101(12) of the Code, exemption under Section 101(1) was denied; and that since the necessary information had not been furnished to the Commissioner as requested, the exemption under Section 103(12) of the 1928 Act had been revoked by Bureau letter of March 12, 1948, as of January 1, 1939, effective date of the Internal Revenue Code. The letter then proceeded to explain the manner in which the claims would be adjusted, on the basis that the taxpayer had failed to show it was entitled to exemption under either provision.

Whether the taxpayer was exempt from federal income tax under either of the foregoing provisions depends upon the facts of each individual case, the burden of proving which is upon the taxpayer, and it is the contention of the Government here that the taxpayer has failed to establish its right to exemption under either provision for the period here involved.

Second. The taxpayer's criticism, under the heading "Were the Manager and Clerical Worker for the Co-operative Exempt from Social Security Tax" (Br. 7-8), of the Commissioner's method of determining the taxable status of those employees who devoted some part of their time to doing admittedly agricultural labor fails to take into consideration the provisions of Section

1426(c) of the Internal Revenue Code, under which his determination was made. Under that section no allocation of services is to be made. Under that section, if the services performed during one-half or more of any pay period constitute "employment" within the meaning of the statute all of the services of the employee are deemed to be "employment", while if such services performed by an employee during more than one-half of any pay period do not constitute "employment" within the meaning of the statute then none of the services rendered by that employee are to be taxed. Otherwise the taxpayer offers nothing constructive in answer to the precise question whether the services of the particular employees here involved constituted "agricultural labor" within the meaning of the statute. The discussion of this subject throughout its brief, to the extent it is applicable here, deals with services of the character which the Commissioner already has held in this case are not subject to the tax. We do not understand the taxpayer to disagree with the Commissioner's allocation of services of the particular employees here involved, as shown in the letter of June 24, 1948 (R. 46-47), and there is nothing in the record to show it was erroneous. Therefore, his determination should be accepted as correct.

CONCLUSION

The decision of the court below is wrong. It is contrary to the facts and the law and should be reversed and remanded to the court below with directions to dismiss the complaint.

Respectfully submitted,

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,
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Attorney General.*

J. CHARLES DENNIS,
United States Attorney.

GUY A. B. DOVELL,
Assistant United States Attorney.

MAY, 1950.

No. 12410

United States
Court of Appeals
For the Ninth Circuit.

L. F. CORRIGAN and CLARA R. CORRIGAN,
et al.,

Appellants,

vs.

SAN MARCOS HOTEL COMPANY, a Corpora-
tion,

Appellee.

Transcript of Record

Appeal from the United States District Court
District of Arizona.

FEB 8-1950

PAUL P. O'BRIEN,
CLERK

No. 12410

United States
Court of Appeals
For the Ninth Circuit.

L. F. CORRIGAN and CLARA R. CORRIGAN,
et al.,

Appellants,

vs.

SAN MARCOS HOTEL COMPANY, a Corpora-
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorneys for Appellee.

In the United States District Court
for the District of Arizona

No. Civ. 1211—Phx.

L. F. CORRIGAN and CLARA R. CORRIGAN,
who sue on behalf of General Insurance Com-
pany of America, a corporation,

Plaintiffs,

vs.

SAN MARCOS HOTEL COMPANY, a corpora-
tion,

Defendant.

COMPLAINT

(Action for damages—Subrogation—
Diversity of Citizenship)

Plaintiffs Allege:

I.

Plaintiffs L. F. Corrigan and Clara R. Corrigan are husband and wife, and are now and were at all times herein mentioned, citizens and resident of the State of Texas. General Insurance Company of America is now, and was at all such times, a citizen and resident of the State of Washington, being a corporation duly organized and existing under and by virtue of the laws of that state, and having its principal place of business in the City of Seattle in said state. Said General Insurance Company of America was at all times herein mentioned authorized and licensed to transact its insurance business

within the state of Arizona. Defendant San Marcos Hotel Company is a citizen and resident of the State of Arizona, being a corporation duly organized and existing under and by virtue of the laws of the State of Arizona. Said defendant owns and operates the San Marcos Hotel at Chandler, Arizona. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3000.00) exclusive of interest and costs.

II.

On the 17th day of March, 1947, said General Insurance Company of America issued to said L. F. Corrigan and Clara R. Corrigan, a certain policy of insurance, wherein and whereby said General Insurance Company of America did agree to indemnify the said L. F. Corrigan and Clara R. Corrigan, for a term commencing the 17th day of March, 1947 and expiring by limitation on the 17th day of March, 1950, against damage to, or loss by theft, of personal property therein described, to the actual or scheduled value thereof not in excess of the sum of Forty Thousand Dollars (\$40,000.00). That, among other things, the personal property included and covered by said policy of insurance was the full length natural wild mink fur coat belonging to the insureds. The scheduled value of said fur coat was Seven Thousand Dollars (\$7000.00), and the actual value thereof was approximately Ten Thousand Dollars (\$10,000.00).

III.

On February 15, 1948, the said Clara R. Corrigan,

while a guest of defendant in its hotel at Chandler, Arizona, placed and left said mink coat under the care of said defendant. On said date, while said mink coat was under the care of said defendant, said mink coat was stolen, and it was not and has not been recovered and restored to the said Clara R. Corrigan.

IV.

Said policy of insurance contained the express provision that General Insurance Company of America, upon payment of loss, or damage, as a claim under said policy, should be legally subrogated to all rights and causes of action of said L. F. Corrigan and Clara R. Corrigan, to the extent of the payment made under said policy, against any person whose negligence or other wrongful conduct caused such loss or damage, or contributed thereto.

V.

The said L. F. Corrigan and Clara R. Corrigan duly performed each and all of the covenants, terms and conditions of said policy of insurance upon their part required, and on or about the 6th day of April, 1948, said General Insurance Company of America paid the said L. F. Corrigan and Clara Clara Corrigan, under the policy of insurance aforesaid, for the loss of the mink coat aforesaid, the sum of Seven Thousand Dollars (\$7000.00) and the said L. F. Corrigan and Clara R. Corrigan executed and delivered to said General Insurance Company of America proper articles of subrogation in the premises.

VI.

The plaintiffs L. F. Corrigan and Clara R. Corrigan, upon demand of said General Insurance Company of America, bring this action for and on behalf of said General Insurance Company of America under its right of subrogation aforesaid.

Wherefore, plaintiffs pray judgment against the defendant for the use and benefit of said General Insurance Company of America in the sum of Seven Thousand Dollars (\$7000.00), and for plaintiff's costs herein.

KRAMER, MORRISON,
ROCHE & PERRY,
Attorneys for Plaintiffs.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed July 16, 1948.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named by its attorneys undersigned, and by way of answer to the Complaint of plaintiffs herein admits, denies and alleges as follows:

I.

Admits that defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and owns and operates the San Marcos Hotel at Chandler, Arizona;

alleges that defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph I of said Complaint, and, therefore, demands strict proof thereof.

II.

Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph II of said Complaint, and, therefore, demands strict proof thereof.

III.

Admits that on or about February 15, 1948 plaintiff Clara R. Corrigan was a guest at the San Marcos Hotel owned by defendant in Chandler, Arizona; denies that plaintiffs or any of them ever, in any manner, at any time material to this action placed or left a mink coat under the care of defendant; alleges that it is without sufficient information concerning the allegations that a mink coat belonging to plaintiff Clara R. Corrigan was stolen and was not and has not been recovered and restored to her to form a belief as to the truth or falsity thereof, and, therefore, demands strict proof of each and every such allegation in said Complaint contained; alleges that if a mink coat belonging to plaintiff Clara R. Corrigan was stolen from or lost by her, or was stolen or disappeared, while she was a guest of defendant at its said hotel in Chandler, Arizona, such stealing, loss or disappearance was occasioned by the negligence of the said plaintiff Clara R. Cor-

rigan and that defendant was not and is not responsible or liable on account of such stealing or loss.

IV.

Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs IV, V and VI of said Complaint, and, therefore, demands strict proof thereof.

V.

Denies each and every allegation in said Complaint contained not herein expressly admitted or denied for lack of information and belief.

Wherefore, defendant prays that plaintiffs take nothing by their said Complaint, but that the same be dismissed, and that defendant recover of and from plaintiffs its costs herein incurred.

CUNNINGHAM, CARSON,
MESSINGER & CARSON,

By /s/ C. A. CARSON, JR.,
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 9, 1948.

In the United States District Court
for the District of Arizona

Civ. 1211

October, 1948 Term

L. F. CORRIGAN, et ux,

Plaintiffs,

vs.

SAN MARCOS HOTEL COMPANY,

Defendant.

MINUTE ENTRY OF MARCH 1, 1949
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, presiding.

This case comes on regularly for trial this day. Burr Sutter, Esquire, appears as counsel for the plaintiffs. C. A. Carson, Esq. and C. A. Carson III, Esq. appear as counsel for the defendant. Louis L. Billar is present as official reporter.

It Is Ordered that Burr Sutter, Esq. be and he is entered as associate counsel for the plaintiffs.

Both sides announce ready for trial.

Plaintiffs' Case:

John F. Quarty is now duly sworn and cross-examined by counsel for the plaintiffs as an adverse party.

Plaintiffs' Exhibit 1, deposition of Clara R. Corrigan, and Plaintiffs' Exhibit 2, deposition of L. F. Corrigan, are now admitted in evidence, subject to the defendant's objections.

Plaintiffs' Exhibit 3, insurance policy, is now admitted in evidence.

Plaintiffs' Exhibit 4, proof of loss, is now admitted in evidence.

Whereupon, the Plaintiffs' rest.

Defendant's Case:

John F. Quarty, heretofore sworn, is now called and examined on behalf of the defendant.

Mrs. Elizabeth Hicks is now duly sworn and examined on behalf of the defendant.

Whereupon, the Defendant rests.

Both sides rest.

Plaintiffs now move for judgment in accordance with prayer of complaint.

All evidence being in, the case is now argued by respective counsel to the Court.

It Is Ordered that the record show that this case is submitted and taken under advisement.

In the United States District Court
for the District of Arizona

Civ. 1211

October, 1948 Term

L. F. CORRIGAN and CLARA R. CORRIGAN,
et al,

Plaintiffs,

vs.

SAN MARCOS HOTEL COMPANY, a corpora-
tion,

Defendant.

MINUTE ENTRY OF MARCH 9, 1949
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, presiding.

This case having been submitted and taken under
advisement and the Court having filed its memoran-
dum decision herein,

It Is Ordered that the defendant have judgment
herein.

[Title of District Court and Cause.]

DEFENDANT'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

The Above-Entitled Action having come on regu-
larly for trial before the Court sitting without a
jury on the 1st day of March, 1949, the plaintiff
being represented by Messrs. Kramer, Morrison,
Roche & Perry by Burr Sutter, and defendant being

represented by Messrs. Cunningham, Carson, Messenger & Carson by Charles A. Carson and C. A. Carson, III, and the Court having heard the evidence and arguments of counsel, and the matter having been submitted for decision and the Court's memorandum of decision having heretofore been filed herein, the Court hereinafter states its

Findings of Fact, to-wit:

1. That plaintiff Clara R. Corrigan was negligent in caring for the fur coat which was lost and to recover for the loss of which this action was instituted.

2. That the negligence of plaintiff Clara R. Corrigan was the proximate cause of the loss of fur coat.

3. That the loss of said fur coat would not have occurred had plaintiff Clara R. Corrigan exercised ordinary care in its safekeeping.

The Court, upon the foregoing facts, makes the following

Conclusions of Law:

1. That plaintiffs are not entitled to recover from defendant for the loss of said fur coat.

2. That defendant is entitled to judgment against plaintiffs on plaintiffs' complaint and for defendant's costs incurred herein.

Dated: March, 1949, at Phoenix, Arizona.

.....,

Judge.

[Endorsed]: Filed March 21, 1949.

[Title of District Court and Cause.]

PLAINTIFFS' OBJECTIONS TO PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Come Now the plaintiffs and make the following objections to the findings of fact and conclusions of law heretofore proposed by the defendant herein:

1. Object to finding of fact No. 1, for the reason and upon the ground that said finding is without support in the evidence and for the further reason that said finding is a conclusion of law.

2. Object to finding of fact No. 2, for the reason and upon the ground that said finding is without support in the evidence and for the further reason that said finding is a conclusion of law.

3. Object to finding of fact No. 3, for the reason and upon the ground that said finding is without support in the evidence, for the further reason that said finding is a conclusion of law, and for the further reason that said finding is mere conjecture and speculation.

4. Object to conclusion of law No. 1, for the reason and upon the ground that the same is contrary to law and the evidence.

5. Object to conclusion of law No. 2, for the

reason and upon the grounds that the same is contrary to law and the evidence.

KRAMER, MORRISON,

ROCHE & PERRY,

Attorneys for Plaintiffs.

By /s/ BURR SUTTER.

Receipt of copy acknowledged.

[Endorsed]: Filed March 22, 1949.

[Title of District Court and Cause.]

PLAINTIFFS' PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

The above entitled action having come on regularly for trial, before the court, sitting without a jury, on the first day of March, 1949, the plaintiffs being represented by Messrs. Kramer, Morrison, Roche & Perry, by Burr Sutter, and defendant being represented by Messrs. Cunningham, Carson, Messinger and Carson, by Charles A. Carson and Charles A. Carson III and the court, having heard the evidence and the matter having been submitted for decision, the court, being fully advised in the premises, makes the following findings of fact and conclusions of law:

Findings of Fact

I.

The plaintiffs, L. F. Corrigan and Clara R. Corrigan, are husband and wife, and are now and were

at all times pertinent to this proceeding citizens and residents of the State of Texas. The General Insurance Company of America is now, and was at all times pertinent to this proceeding, a corporation duly organized and existing under the laws of the State of Washington, having its principal place of business in the City of Seattle, in said state, and duly authorized and licensed to transact its insurance business within the State of Arizona. The defendant, San Marcos Hotel Company is, and was at all times pertinent to these proceedings, a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and the defendant is and was the owner and operator of the San Marcos Hotel at Chandler, Arizona.

II.

That the amount in controversy exceeds the sum of three thousand dollars (\$3,000.00), exclusive of interest and costs.

III.

That on the 17th day of March, 1947, General Insurance Company of America issued to plaintiffs, L. F. Corrigan and Clara R. Corrigan, a certain policy of insurance whereby said company agreed to indemnify said plaintiffs for a term commencing the 17th day of March, 1947 and expiring the 17th day of March, 1950, against damage to or loss by theft of personal property described therein not in excess of the sum of forty thousand dollars (\$40,000.00). That among other things, the personal property covered by said policy was a certain full

length natural wild mink fur coat, belonging to the insureds, the scheduled value of which was seven thousand dollars (\$7,000.00) and the actual value thereof approximately ten thousand dollars (\$10,000.00).

IV.

That on February 15, 1948, while the plaintiffs were guests of defendant in its hotel at Chandler, Arizona, plaintiff Clara R. Corrigan placed and left said mink coat under the care of said defendant, by leaving the same in the ladies' powder room adjacent to the dining room of said hotel, said powder room being maintained by defendant and intended by defendant for the use of its guests as a place to leave their coats and other belongings while using the facilities of the dining room and hotel. That on said date, while said mink coat was under the care of defendant, said mink coat was stolen, and it was not, and has not been, recovered.

V.

That at said time and place the plaintiff, Clara R. Corrigan, acted as a reasonably prudent person, under the circumstances.

VI.

That said policy of insurance aforesaid contained the provision that General Insurance Company of America, upon payment of loss or damage under said policy, should be legally subrogated to all rights and causes of action of said L. F. Corrigan and Clara R. Corrigan, to the extent of the payment

made under said policy. That claim was duly filed by plaintiffs under said policy in the sum of seven thousand dollars (\$7,000.00), which sum was paid by said insurance company to plaintiffs, who executed in favor of said insurance company articles of subrogation in said amount.

VII.

That plaintiffs, L. F. Corrigan and Clara R. Corrigan, upon demand of said General Insurance Company of America, as provided in said policy of insurance, brought this action for and on behalf of said insurance company, under its right of subrogation aforesaid.

Conclusions of Law

I.

That this action is controlled by the provisions of Section 62-304, Arizona Code Annotated 1939.

II.

That the loss involved herein was not occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the plaintiffs, or either of them, or by the act of someone brought into the hotel by the plaintiffs, or either of them.

III.

That plaintiffs are entitled to recover from defendant for the loss of said fur coat the sum of seven thousand dollars (\$7,000.00) for the use and benefit of General Insurance Company of America,

and for plaintiffs' costs herein incurred and expended.

Dated this day of March, 1949.

.....,

Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed March 22, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled action having come on regularly for trial before the Court, sitting without a jury, on the 1st day of March, 1949, the Plaintiffs being represented by Messrs. Kramer, Morrison, Roche & Perry by Burr Sutter, and Defendant being represented by Messrs. Cunningham, Carson, Messinger & Carson by Charles A. Carson and C. A. Carson, III, and the Court having heard the evidence and the matter having been submitted for decision, the Court being fully advised in the premises makes the following findings of fact and conclusions of law, to-wit:

Findings of Fact

1. The Plaintiffs, L. F. Corrigan and Clara R. Corrigan are husband and wife, and are now and at all times were, pertinent to this proceeding, citizens

and residents of the State of Texas. The General Insurance Company of America is now and was at all times pertinent to this proceeding a corporation duly organized and existing under the laws of the State of Washington, having its principal place of business in the City of Seattle, in said State, and was duly authorized and licensed to transact its insurance business in the State of Arizona. The Defendant, San Marcos Hotel Company, is and was at all times pertinent to this proceeding a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and the Defendant is and was the owner and operator of the San Marcos Hotel at Chandler, Arizona.

2. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

3. On the 17th day of March, 1947, General Insurance Company of America issued to Plaintiffs, L. F. Corrigan and Clara R. Corrigan, a certain policy of insurance whereby said Company agreed to indemnify said Plaintiffs for a term commencing the 17th day of March, 1947, and expiring the 17th day of March, 1950, against damage to or loss by theft of personal property described therein not in excess of the sum of Forty Thousand Dollars (\$40,000.00). That among other things, the personal property covered by said policy was a certain full-length natural wild Mink fur coat, belonging to the insureds, the scheduled value of which was Seven Thousand Dollars (\$7,000.00) and the actual value

of which was approximately Ten Thousand Dollars (\$10,000.00).

4. Plaintiff Clara R. Corrigan, while a guest at the San Marcos Hotel at Chandler, Arizona, on or about February 15, 1948, had and retained in her personal and exclusive custody and control a certain Mink fur coat of the value of approximately Seven Thousand Dollars (\$7,000.00).

5. At or about the hour of 7:15 o'clock in the evening of said 15th day of February, 1948, Plaintiff Clara R. Corrigan placed said fur coat in the public powder room near the entrance to the public dining room in said San Marcos Hotel upon a hanger which she suspended from an eighty-four inch (84") rack belonging to Defendant.

6. There was, at said time, a sign on the inside wall of said powder room to the left of the door, which sign is seven and one-half inches ($7\frac{1}{2}$ ") by four inches (4") in size and upon which was printed: "Not Responsible for Articles Left Here—Signed—San Marcos." Said sign is so situated and is of such prominence that any person habitually using said powder room must have seen the sign, and Plaintiff Clara R. Corrigan did see said sign prior to February 15, 1948.

7. Said powder room is in the public part of said hotel, being on the East side of a short hallway leading South from the public lobby of said hotel to the public dining room operated by Defendant.

8. No attendant was at any time, including said 15th day of February, 1948, on duty in said public

powder room to guard any articles left there, or in any other capacity, as was well known to Plaintiff Clara R. Corrigan.

9. Access to said powder room may be had either through the public lobby, the public dining room or the kitchens of said San Marcos Hotel, as was known to said Plaintiff Clara R. Corrigan.

10. Defendant, through its employees, prior to February 15, 1948, had verbally warned the Plaintiff Clara R. Corrigan and other guests that said public powder room was not a safe place to leave valuable articles.

11. Plaintiff Clara R. Corrigan, on said 15th day of February, 1948, did not inform any officer or employee of Defendant that she had placed or intended to place said fur coat in said powder room, nor had she ever informed Defendant that she was in the habit of so doing.

12. After her meal on said day, Plaintiff Clara R. Corrigan went directly from said public dining room to said public lobby, where she remained until approximately 10:15 or 10:30 o'clock in the evening of said day, conversing and participating in games with other guests of the hotel.

13. There were, throughout said evening, as Plaintiff well knew, many visitors at said hotel and in said public dining room and lobby who were not guests of said hotel and none of whom were known to Plaintiff. Said Plaintiff did not, after leaving said fur coat in the powder room, return there or check as to the whereabouts or safety of said coat

until approximately 10:15 o'clock on said evening, nor did she take any notice of the numerous fur coats which were worn or carried out of said public lobby by guests and strangers.

14. There were, on February 15, 1948, facilities provided by Defendant behind the hotel desk for the safekeeping of the property of guests at the San Marcos Hotel, as was known to Plaintiff Clara R. Corrigan.

15. Plaintiff Clara R. Corrigan did not use ordinary or reasonable care in the safekeeping of her fur coat on said day.

16. At approximately 10:15 or 10:30 o'clock on said evening, Plaintiff Clara R. Corrigan returned to the powder room and was unable to find her coat. Said coat had not been recovered by or restored to Plaintiffs Corrigan prior to the trial of this cause.

17. The proximate cause of the loss of Plaintiff Clara R. Corrigan's coat was the negligence of said Plaintiff, and said loss would not have occurred without such negligence.

18. General Insurance Company of America, under its said policy of insurance, issued to Plaintiffs Corrigan, was bound to and did pay said Plaintiffs Corrigan the sum of Seven Thousand Dollars (\$7,000.00) on account of the loss of said fur coat, and was entitled to be, and was, subrogated to any claims of Plaintiffs Corrigan against Defendant on account of such loss. That Plaintiffs Corrigan brought this action for and on behalf of said insur-

ance company under its right of subrogation, as aforesaid.

Conclusions of Law

1. That Plaintiff Clara R. Corrigan was negligent in caring for the fur coat which was lost and to recover for the loss of which this action was instituted, and that the proximate cause of such loss was the negligence of said Plaintiff Clara R. Corrigan.

2. That the loss of said fur coat would not have occurred had Plaintiff Clara R. Corrigan exercised ordinary care in its safekeeping.

3. That Plaintiffs are not entitled to recover from Defendant for the loss of said fur coat, and that Defendant is entitled to judgment against the Plaintiffs on their Complaint, and for Defendant's costs incurred herein.

Dated: This 8th day of July, 1949.

/s/ DAVE W. LING,
Judge.

[Endorsed]: Filed July 8, 1949.

In the United States District Court
for the District of Arizona

No. Civ-1211-Phx.

L. F. CORRIGAN and CLARA R. CORRIGAN,
who sue on behalf of General Insurance Com-
pany of America, a corporation,
Plaintiffs,

vs.

SAN MARCOS HOTEL COMPANY, a corpora-
tion,

Defendant.

JUDGMENT

The above-entitled action having come on regularly for trial before the Court sitting without a jury on March 1, 1949, plaintiffs being represented by Messrs. Kramer, Morrison, Roche & Perry by Burr Sutter, and defendant being represented by Messrs. Cunningham, Carson, Messinger & Carson by Charles A. Carson and C. A. Carson, III, and the Court having heard the evidence and arguments of counsel and having heretofore filed herein its written memorandum of decision and its written findings of fact and conclusions of law, to which reference is hereby made,

It Is, Therefore, Ordered, Adjudged And Decreed that plaintiffs take nothing by their complaint herein; that this action be and it hereby is dismissed on the merits with prejudice; that defendant have

and recover from plaintiffs its costs incurred in this action; and that defendant have execution thereof.

Done In Open Court this 8th day of July, 1949.

/s/ DAVE W. LING,

Judge.

[Endorsed]: Filed July 8, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come now the platintiffs in the above entitled action and move the Court for a new trial herein on the following grounds:

1. The judgment entered herein is contrary to the evidence submitted.
2. The judgment entered herein is contrary to the law.

KRAMER, MORRISON, ROCHE
& PERRY,

By /s/ BURR SUTTER,

Attorneys for Plaintiffs.

MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL

In this memorandum references to the Reporter's Transcript will be made by the letters R. T. followed by the page number, and references to the deposi-

tion of Clara R. Corrigan will be made by the word "Dep." followed by the page number.

The uncontradicted evidence in this case shows that the defendant San Marcos Hotel Company provided a ladies' powder room in the hotel as a place where lady guests might leave their coats while using the hotel facilities (R. T. 4), and there is no question that the powder room was designed for that purpose and used for that purpose.

The plaintiff Clara R. Corrigan, together with her husband, had visited the hotel over a period of seven years (Dep. 29), during which time the powder room was the only place provided by the hotel in which the ladies could leave their coats while in the dining room (Dep. 31), and it was the custom over the years for the ladies to leave their coats in that place (Dep. 8, 9, 31 and 32).

On the occasion in question Mrs. Corrigan had placed her coat in the powder room, at which time there were approximately 200 other coats there, many of which were furs (Dep. 19), and a number of other expensive coats were left in the powder room (Dep. 20). When Mrs. Corrigan returned to secure her coat there were approximately 25 ladies' coats remaining in the powder room (Dep. 19).

This action is governed by the provisions of Section 62-304, Arizona Code Annotated, 1939, the pertinent part of which reads as follows:

"An innkeeper is liable for all losses of, or injuries to, personal property left or placed by his guests under his care, unless occasioned by an ir-

resistible, superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one brought into the inn by the guest.”

The Court in its memorandum opinion and in the findings of fact found that the innkeeper was exempt from liability because Mrs. Corrigan was negligent in the care of her coat. This finding is not sustained by the law or the evidence.

The general question of negligence has been defined by the Supreme Court of Arizona in the case of Southern Pacific Co. vs. Buntin, 54 Ariz. 180, 94 Pac. 2d 639, as follows:

“‘. . . negligence is the omission to do something which a reasonably prudent man, guided by those considerations which usually regulate the conduct of human affairs, would do; or is the doing of something which a prudent and reasonable man, guided by those same considerations would not do; it is not intrinsic or absolute, but is always relative to the surrounding circumstances of time, place and persons.’ ”

In determining whether or not Mrs. Corrigan was negligent, we cannot be governed solely by the value of the coat which was stolen, but must refer to all the surrounding circumstances of time, place and persons. This loss occurred at an expensive resort hotel which was frequented by people of means. The place of the loss was the hotel powder room which was maintained as a place for ladies to leave their coats, and it was used for this purpose by Mrs. Corrigan. It was unquestionably the custom for the

ladies who were guests of the hotel to leave their coats in this place, and it can hardly be said that Mrs. Corrigan was negligent in following this custom of many years standing by leaving her coat in the place designated for that purpose. If she was negligent on this occasion, so were approximately two hundred other ladies who had also left their coats, including many valuable furs, in the powder room. Certinly Mrs. Corrigan acted as a reasonably prudent person would have acted under the circumstances.

In the case of Maxwell Operating Co. vs. Harper, 138 Tenn. 640, 200 S. W. 515, the plaintiff, who was a guest of the defendant hotel, placed his overcoat in the hotel check room and received a check from the attendant on which was printed: "Left at owner's risk. The management will not be responsible for loss or damage." The overcoat was stolen from the hotel check room. The court held that a hotel cannot limit its liability in the manner attempted, and further held that a hotel which provides a check room invites its use and will be responsible for any articles stolen from the check room.

There was no duty on the part of Mrs. Corrigan to notify the hotel that she was leaving her coat in the powder room, since the hotel was bound to know that guests would leave their coats in this place.

In Swanner vs. Conner Hotel Co., 224 S. W. 123, a guest who desired to register at the hotel left his luggage in the lobby since his room was not ready.

It was stolen, and the hotel company was held liable for the loss even though the attention of the innkeeper was not called to the luggage when it was left by the owner.

In *Keith vs. Atkinson*, 48 Colo. 480, 111 Pac. 55, 139 Am. St. Rep. 284, it was held that a guest of a hotel has the right to rely upon prevailing customs and that the innkeeper is bound thereby.

Therefore, Mrs. Corrigan could not have been negligent in placing her coat in a place customarily used for that purpose.

Respectfully submitted,

KRAMER, MORRISON,

ROCHE & PERRY.

By /s/ BURR SUTTER.

[Endorsed]: Filed July 18, 1949.

In the United States District Court
for the District of Arizona

Civ-1211

October 1949 Term
MINUTE ENTRY OF
MONDAY, OCTOBER 3, 1949
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

L. F. CORRIGAN, et ux,

Plaintiffs,

vs.

SAN MARCOS HOTEL COMPANY,

Defendant.

Plaintiffs' Motion for New Trial comes on regularly for hearing this day. Burr Sutter, Esquire, appears as counsel for the plaintiffs. Charles A. Carson III, Esquire, appears as counsel for the defendant.

Plaintiffs' Motion for New Trial is now argued by respective counsel.

It Is Ordered that said Motion for New Trial be and it is denied.

(Docketed Oct. 3, 1949.)

[Title of District Court and Cause.]

PLAINTIFFS' NOTICE OF APPEAL

Notice Is Hereby Given that the plaintiffs above named hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the judgment of the United States District Court for the District of Arizona rendered and entered July 8, 1949 and from the whole of said judgment, and from the order of said District Court entered October 2, 1949 denying the plaintiffs' motion for new trial.

KRAMER, MORRISON,

ROCHE & PERRY,

By /s/ ALLAN K. PERRY,

Attorneys for Plaintiffs.

[Endorsed]: Filed October 28, 1949.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That we, L. F. Corrigan and Clara R. Corrigan, who sue on behalf of General Insurance Company of America, a corporation, the plaintiffs in the above numbered and entitled action, as principal obligors, and Fidelity and Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and authorized to become and be sole surety upon bonds

required in the courts of the United States, as surety, are held and firmly bound unto San Marcos Hotel Company, an Arizona corporation, the defendant above named, in the penal sum of Two Hundred Fifty Dollars (\$250), for the payment of which said sum well and truly to be made said principal obligors and the corporation in whose behalf they sue and the said surety bind themselves and their respective heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that,

Whereas, under date of July 8, 1949 a judgment was rendered and entered in the above numbered and entitled action in favor of the defendant above named, and against said plaintiffs, and thereafter and on the 2nd day of October, 1949 an order was entered in said court and cause, denying said plaintiffs' motion for new trial, and the principal obligors herein have appealed to the United States Court of Appeals for the Ninth Circuit from said judgment and said order.

Therefore, if the said principal obligors shall pay the costs that may be assessed against them if said appeal is dismissed or the judgment appealed from affirmed, or such costs as the appellate court may award if the order appealed from is modified, then this obligation shall be void, otherwise to remain in full force, effect and virtue.

Witness the hands of the principal obligors, by their duly authorized attorney, and the corporate

name and seal of the surety, by its duly authorized attorney-in-fact, this 28th day of October, 1949.

L. F. CORRIGAN and

CLARA R. CORRIGAN,

who sue on behalf of General Insurance Company of America, a corporation.

By /s/ ALLAN K. PERRY,

Their Attorney.

FIDELITY AND DEPOSIT

COMPANY OF MARYLAND,

[Seal]: By /s/ C. A. DUMMOND,

Its Attorney-in-Fact.

[Endorsed]: Filed October 28, 1949.

[Title of District Court and Cause.]

STATEMENT OF POINT UPON WHICH
PLAINTIFFS INTEND TO RELY UPON
THEIR APPEAL

The plaintiffs above named, who, concurrently with the filing of this statement, have perfected an appeal to the United States Court of Appeals for the Ninth Circuit, from the judgment of the United States District Court for the District of Arizona, entered July 8, 1949, and the order of said District Court denying said plaintiffs' motion for new trial, entered October 2, 1949, intend to rely upon the following point upon their appeal to said United States Court of Appeals, viz:

All of the evidence in the cause, taken in the

light most favorable to the defendant, fails to disclose any negligence upon the part of the plaintiffs, or any one or more of them, that would excuse the defendant from the liability imposed upon it as an innkeeper under Section 62-304 of the Arizona Code of 1939.

KRAMER, MORRISON,
ROCHE & PERRY,
By /s/ ALLAN K. PERRY,
Attorneys for Plaintiffs.

[Endorsed]: Filed October 28, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

The plaintiffs above named hereby designate the following portions of the record to be certified and transmitted to the United States Court of Appeals for the Ninth Circuit, to-wit:

1. Complaint filed July 16, 1948.
2. Answer filed August 9, 1948.
3. Plaintiffs' Exhibit No. 1 in evidence (deposition of Clara R. Corrigan) filed March 1, 1949.
4. Plaintiffs' Exhibit No. 2 in evidence (deposition of L. F. Corrigan) filed March 1, 1949.
5. Plaintiffs' Exhibit No. 3 in evidence (insurance policy) filed March 1, 1949.
6. Plaintiffs' Exhibit No. 4 in evidence (proof of loss) filed March 1, 1949.

7. Defendant's proposed findings of fact and conclusions of law filed March 21, 1949.

8. Plaintiffs' objections to proposed findings of fact and conclusions of law filed March 22, 1949.

9. Plaintiffs' proposed findings of fact and conclusions of law filed March 22, 1949.

10. Findings of fact and conclusions of law filed July 8, 1949.

11. Judgment filed July 8, 1949.

12. Reporter's transcript filed July 18, 1949.

13. Plaintiffs' motion for new trial filed July 18, 1949.

14. All minute orders entered by the Clerk in the above entitled cause, on or subsequent to March 1, 1949.

15. Plaintiffs' notice of appeal filed concurrently herewith.

16. Bond on appeal filed concurrently herewith.

17. Statement of point upon which the plaintiffs intend to rely, upon their appeal filed concurrently herewith.

18. This designation.

KRAMER, MORRISON,

ROCHE & PERRY,

Attorneys for Plaintiffs.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed October 28, 1949.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

The above numbered and entitled cause came on duly and regularly to be heard in the above entitled court before the Honorable Dave W. Ling, Judge, presiding without a jury, commencing at 10:00 o'clock a.m., on the 1st day of March, 1949, at Phoenix, Arizona.

The plaintiffs were represented by their attorney, Mr. Burr Sutter, of Messrs. Kramer, Morrison, Roche & Perry, attorneys at law, Phoenix, Arizona.

The defendant was represented by its attorney, Mr. Charles A. Carson III, of Messrs. Cunningham & Carson, attorneys at law, Phoenix, Arizona.

The following proceedings were had:

The Clerk: Civil 1211, Phoenix, L. F. Corrigan and Clara R. Corrigan, who sue on behalf of General Insurance Company of America, a corporation, plaintiff, versus San Marcos Hotel Company, a corporation, for trial.

The Court: Are you ready?

Mr. Sutter: The plaintiffs are ready, your Honor.

Mr. Carson: The defendant is ready, your Honor.

Mr. Sutter: I don't believe I appear as attorney of record in the case yet. I have recently become associated with the firm of the plaintiffs' attorneys, and I'd like to enter my appearance as one of the attorneys for the plaintiffs.

The Court: Very well. All right, call your first witness.

Mr. Sutter: I'd like to call Mr. John Quarte for cross-examination.

JOHN QUARTE

was called as a witness by the plaintiffs for cross-examination under the Statute, and being first duly sworn, testified as follows:

Cross-Examination

By Mr. Sutter:

Q. Your name is John Quarte? [2*]

A. That is right.

Q. And what official connection, if any, do you have with the San Marcos Hotel, Mr. Quarte?

A. At present, General Manager.

Q. General Manager? A. Yes, sir.

Q. How long have you been in that capacity?

A. Six years.

Q. Are you acquainted with Clara R. Corrigan and L. F. Corrigan, the plaintiffs?

A. Yes, sir.

Q. How long have you known the Corrigans?

A. Four years, I believe, four or five years.

Q. During that period of time have they been guests on occasions at the San Marcos Hotel at Chandler? A. Yes.

Q. Were they guests at that hotel during the Winter season of '48? A. That is right.

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of John Quarte.)

Q. Do you recall approximately for what period they were staying there?

A. I believe they were there from the 4th of February until the 1st of March of——

Q. Not quite a month?

A. Yes, not quite a month. [3]

Q. But they were guests at the hotel on the 15th of February, 1948? A. That is right.

Q. Mr. Quarte, in connection with the hotel, there is a dining room operated, is there not?

A. That is right.

Q. Does the Hotel provide any facilities for the use by patrons of the dining room and guests of the hotel that use the dining room in the way of a place for guests to leave wraps?

A. We have a room connected with the ladies' powder room where guests choose to leave their wraps on occasions.

Q. In the ladies' powder room are there any facilities particularly designed for that purpose?

A. There is a coat rack there for those wishing to leave their wraps or things.

Q. Is that a long horizontal bar on a stand?

A. Yes, it is about seven feet wide—long, I should say.

Q. On that did you have individual coat hangers for the use of the guests? A. Yes.

Q. Do you know whether or not anything out of the ordinary occurred on the evening of February 15th, 1948, with respect to Mrs. Corrigan and any of her personal belongings?

(Testimony of John Quarte.)

A. I was notified by Mrs. Hicks, who is here, our Social Hostess. I was at the movies that evening and she sent one of the boys down to get me, and when I arrived at the hotel, it was just a block and a half away, or a block away, I was notified that Mrs. Corrigan's coat was missing.

Q. You were not present at the hotel at the time? A. No, I was not.

Q. Has a demand been made upon you or the hotel for the payment of the value of the coat?

A. No.

Q. Did you receive——

A. Wait a minute, by who?

Q. By the General Insurance Company of America. A. No, they have not.

Q. Did you receive a letter last summer from the law firm of Kramer, Morrison, Roche & Perry in which demand was made upon you?

A. I believe that was done through Mr. Carson. Did I get a copy of that? My attorneys——

Q. The letter was dated June 25th, 1948, in which the law firm that I just mentioned stated they represented the General Insurance Company?

A. Yes.

Q. And I believe in that letter a demand was [5] made for \$7000? A. I don't recall the figure.

Q. Has anything been paid as the result of that demand? A. No.

Q. The hotel has paid nothing?

A. Nothing.

(Testimony of John Quarte.)

Q. Are Mr. and Mrs. Corrigan by any chance, guests at your hotel at the present time?

A. They left last Sunday.

Q. Do you know where they went?

A. I believe they went back to Dallas, but I am not sure.

Mr. Sutter: That is all.

The Witness: Thank you.

Mr. Sutter: At this time, if the Court please, I'd like to offer the depositions of L. F. Corrigan and Clara R. Corrigan, the original of which has been filed with the Court. I'd also like to offer in evidence the two exhibits which are attached to the deposition, being Plaintiff's Exhibits A and B for identification for the purpose of the deposition.

Mr. Carson: Could we have those offers made separately so we might have a chance to object to the use of the deposition? [6]

The Court: All right.

Mr. Sutter: Well, at this time we will offer the depositions now and Mr. Carson can state his objections if he has any.

Mr. Carson: If the Court please, we object to the use of the deposition at this trial, upon the grounds that it is not—it does not comply with the requirements of the Federal Rules of Civil Procedure for the use of depositions. I might state specifically that Rule 26-D relating to the use of depositions at the trial, provides that upon—that at

a trial or upon the hearing, a deposition, so far as admissible under the rules of evidence, may be used in accordance with any one of the following provisions: In Subdivision 1 it provides for use in contradicting or impeaching testimony of deponent as a witness, which does not apply here. Subdivision 2 is the use of a deposition of an adverse party, which does not apply here. This deposition is being offered by the plaintiffs, and is the plaintiffs' deposition. Subdivision 3 is the one which would apply here, and is to the effect that a deposition, whether or not a party, may be used by any party for any purpose if the Court finds; 1. That the witness is dead, which is not the case; 2. That the witness is at a [7] greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition.

In this case we don't know where the plaintiffs are, assuming they are in Dallas, there is no showing as to any necessity for their being there, and they went there of their own free will, and are now offering their own deposition, and there is a provision for the use when the witness is unable to testify because of age, sickness, infirmity or imprisonment, or that the party offering the deposition has been unable to procure attendance of the witness, or upon application and notice that such exceptional circumstances exist as make it desirable in the interest of justice and with due regard to the

importance of presenting the testimony of witnesses orally in open court, to allow the depositions to be used. There is no showing here of any exceptional circumstances.

As I stated, the parties offering their own deposition through their attorney were, as testified by Mr. Quarte, in Maricopa County, Arizona, until Sunday, when they left. For what purpose and for what destination, we don't know, but certainly their absence has been procured by [8] themselves and there is no showing of any exceptional circumstances to justify their procuring their own absence and then presenting their deposition, and for that reason we believe the depositions of Clara R. Corrigan and L. F. Corrigan, as offered by their attorneys, cannot be used in the trial of this cause. There is no exception in this 26-D and no provision for any use of a deposition.

Mr. Sutter: I'd like to briefly state that according to Mr. Quarte the Corrigan's left Sunday to return to their home in Dallas, Texas, and in the deposition itself it appears that they were going back to Dallas, Texas, and are there at this time.

The Court: When was the deposition taken?

Mr. Sutter: It was taken on the 23d of February, your Honor, and that was the reason the deposition was taken, because they were going to be unavailable for trial. As far as any objection to the use of the deposition is concerned, I can't see where the defendant could be at all hurt by the use of the deposition in this case. They had full and free opportunity to cross-examine at the time the

depositions were taken, and used that right and privilege to the utmost, as the Court will observe.

The Court: I will admit the depositions subject to the objection.

Mr. Sutter: I'd also at this time like to offer the exhibit attached to the deposition as Plaintiffs' Exhibit A, which is a copy of the policy of insurance in question here.

The Court: Any objection to that?

Mr. Carson: No objection.

Mr. Sutter: And I'd like to offer also the exhibit attached to the deposition as Plaintiffs' Exhibit B for identification, which is a proof of loss signed by Mr. L. F. Corrigan and identified by him as such in his deposition.

The Court: All right, they may be received.

(Thereupon the documents were marked as

Plaintiffs' Exhibits 1, 2, 3 and 4 in evidence.)

Mr. Sutter: The plaintiffs rest.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the plaintiffs and the defendant in the above entitled cause, acting through their respective attorneys, that the depositions of L. F. Corrigan and Clara R. Corrigan, plaintiffs in said cause, may be taken in their own behalf before Stanley Martin, a Notary Public in and for the County of Maricopa, State of Arizona, on Wednesday, the 23rd day of February, 1949, com-

mening at 2:30 o'clock p.m. of said day in the law offices of Kramer, Morrison, Roche and Perry, Suite 309, First National Bank Building, Phoenix, Arizona.

It is further stipulated that the signing of the depositions by the respective witnesses is hereby waived.

Dated this 23rd day of February, 1949, at Phoenix, Arizona.

KRAMER, MORRISON,

ROCHE & PERRY,

By /s/ BURR SUTTER,

Attorneys for Plaintiffs.

CUNNINGHAM, CARSON,

MESSINGER & CARSON,

By /s/ C. A. CARSON, III,

Attorneys for Defendant.

PLAINTIFFS' EXHIBIT NO. 1

Deposition of Clara R. Corrigan

Pursuant to the annexed stipulation, the depositions of Clara R. Corrigan and L. F. Corrigan were taken in their own behalf before Stanley Martin, a Notary Public in and for the County of Maricopa, State of Arizona, on Wednesday the 23rd day of February, 1949, commencing at 2:30 o'clock p.m. of said day in the law offices of Kramer, Morrison, Roche and Perry, Suite 309, First National Bank Building, Phoenix, Arizona.

Plaintiffs' Exhibit No. 1—(Continued)
(Déposition of Clara R. Corrigan.)

The plaintiffs were present and represented by their attorneys Kramer, Morrison, Roche and Perry, by Mr. Burr Sutter. The defendant was represented by its attorneys Cunningham, Carson, [*1] Messenger and Carson, by Mr. C. A. Carson, III.

Thereupon, the following proceedings were had:

Mr. Carson: In order that there may be no possibility of later misunderstanding I consider it advisable to state the position of the defendant San Marcos Hotel with reference to the taking of these depositions of the plaintiffs, Mr. and Mrs. Corrigan. It should be understood that our presence here means nothing more than that we have waived the requirements of formal notice and formal granting of leave for the taking of these depositions. And it does not mean that we waive any of our rights to the benefits of the rules of civil procedure with reference to the taking of depositions, but on the contrary we reserve every right we have to object to the use of all or any part of either of these depositions at the trial of this cause.

CLARA R. CORRIGAN

being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

By Mr. Sutter:

.Q Your name is Clara R. Corrigan?

* Page numbering appearing at top of page of original Reporter's Transcript.

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

A. Yes.

Q. And where is your permanent address? [2]

A. Dallas, Texas.

Q. What is the address?

A. 4404 Versailles.

Q. During the winter season of 1948 I believe that you and Mr. Corrigan were guests at the San Marcos Hotel in Chandler, Arizona?

A. Yes, sir.

Q. Approximately what time did you arrive at the San Marcos?

A. Well, approximately the last day of January.

Q. How long did you remain there?

A. Through the month—through the month of February.

Q. And were you paying guests at the hotel?

A. Yes.

Q. Did you pay the regular rates?

R. Yes, sir.

Q. Charged by the hotel. On or about the 15th day of February, 1948, did anything unusual occur as far as any of your personal belongings were concerned?

A. Am I to relate the whole thing now or just answer your question?

Q. Just answer the question?

A. I went into the San Marcos dining room between seven-fifteen and seven-thirty on February 15th in the evening and had dinner with some friends. They came by for me and I went with

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

them. We went into the ladies' room and I hung up my coat along with the friend. We went in and had dinner; came back into the lounge. And I would say it was around ten to ten-fifteen, Mr. Corrigan being out of town, they said to me, "We will walk home with you." so we went in to get our coats and my coat was gone.

Q. Were you staying in the hotel proper or in one of the cottages at the——

A. In one of the cottages.

Q. And what day of the week was that day, do you recall? A. It was Sunday.

Q. And when you placed your coat in the ladies' room were there other coats there?

A. Oh, yes, many.

Q. There were many other coats?

A. Yes, and many fur coats.

Q. Was there a place particularly designed for the hanging of coats in that room?

A. Yes. To the right of the lounge there is a regular open coat hanger.

Q. And did they have individual coat hangers?

A. Yes. [4]

Q. Hanging on that?

A. Yes, regular coat hangers. I had put mine on the coat hanger.

Q. Had you done that on previous occasions?

A. Yes.

Q. Did you do it on every occasion when you wore your coat to the dining room?

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

A. Yes, I always hung it right there and always put it on the hanger.

Q. On these other occasions were there numerous coats there also? A. Yes.

Q. What type coat was this, Mrs. Corrigan?

A. It was a full length Canadian mink, wild mink.

Q. What color?

A. Well, natural. It was a natural wild mink—what is known as natural wild mink.

Q. How long had you had the coat?

A. Approximately two years. I wouldn't be—just a little more or less.

Q. Do you happen to know what the value of that coat was at the time that it was stolen?

A. Well, I would say that—I had asked the question, if that means anything, and it was worth anywhere between eight and ten thousand dollars on [5] the market at that time.

Q. A minimum of eight thousand dollars and maximum of ten thousand dollars, in that range?

A. Yes.

Q. Would it be the market value of the coat?

A. Yes.

Q. Was the coat ever returned to you?

A. No.

Q. Did you have insurance on the coat?

A. Yes.

Q. And was the insurance policy on the coat alone or was it a general personal property floater

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

policy on all your personal belongings?

A. Well, now, that I can't answer. I know that there was a special designation on the coat.

Q. Was there a claim filed with the insurance company? A. Yes.

Q. And for what amount?

A. Seven thousand dollars.

Q. Was that claim paid by the company?

A. Yes.

Q. Approximately when did the company make that payment?

A. Well, let me see—I would say the middle of the summer. About the latter part of July, I [6] would say. I really don't know.

Q. Well, that is close enough. Do you know the name of the insurance company, Mrs. Corrigan?

A. General.

Q. General Insurance Company of America?

A. Yes.

Mr. Sutter: I believe that is all.

Cross-Examination

By Mr. Carson:

Q. Mrs. Corrigan, what accommodations did you occupy at the hotel during the 1948 season?

A. We occupied one bedroom in the center of the orange grove. Orange Grove Avenue as we call it, and we had a bedroom, dressing room and bath, private entrance.

Q. Do you remember the designation of that particular accommodation?

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

A. You mean the number?

Q. The number? A. 11B.

Q. Did you ordinarily keep this coat in your accommodation, in the dressing room or bedroom?

A. Yes.

Q. Had you ever turned it over to any employee or representative of the hotel? A. Never. [7]

Q. Did you at all times keep the coat in your own exclusive custody?

A. Yes. Other than when I would take it to the—would leave it in the cloakroom or the ladies' room.

Q. The coat in other words was always under your direct personal and exclusive control?

A. Yes.

Q. And did you ever leave in other places in the hotel besides in the—— A. No.

Q. Powder room?

A. No. Other than in my own room. Often times I wore it into the lounge but it would be around my shoulders. I never left it.

Q. Did you ever take it off in the lounge?

A. I imagine I did, but I never left it.

Q. Did anybody at the hotel, any representative of the hotel ever attempt to tell you what you should do with your coat?

A. Well, no, not that I can remember.

Q. You did then just as you pleased with it?

A. Well, it was a custom—we have been going

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

there many years. It was a custom; that was the place the ladies left their coats.

Q. I understand. You did with your coat [8] whatever you pleased. Whatever you yourself decided to do with the coat you did without any direction from any person at the hotel, is that right?

A. I am not sure that I understand your question.

Q. Your coat was worn or placed somewhere at your own discretion however you saw fit to wear it or wherever you saw fit to leave it was what was done with the coat at all times?

A. I wouldn't say wherever I saw fit to leave it. I would say that I left it in the customary place.

Q. If you had wanted to leave it on a chair in the lounge, you would have done that?

A. That would have been my privilege, yes.

Q. In other words, the coat was yours to do with and you did do as you saw fit? A. Sure.

Q. The powder room is to the left of the hallway leading into the dining room as you enter the dining room? A. Yes, to the left.

Q. And is that a large room there?

A. Well, I would say it was approximately the size of this room. Maybe a little bit longer than this room. [9]

Q. Possibly fifteen by twenty feet?

A. I guess so. I am not very good on sizes, approximately.

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

Q. Assuming, Mrs. Corrigan, that as you walk into the dining room from the main lobby of the hotel that you are walking south, and you turn in to the powder room, on your left is this rack to which you have referred against the south wall?

A. It is to the right, yes.

Q. Of the powder room? A. Yes.

Q. Is there an attendant in the powder room?

A. No.

Q. Had you noticed a sign, or have you noticed during your stay at the hotel a sign to the effect that the hotel will not be responsible for wraps and other articles left in the powder room?

A. Not in the powder room.

Q. There is no sign?

A. Not that I recall.

Q. Just to refresh your recollection is there not a sign approximately eight by six inches against the west wall of the powder room to the left of the door as you leave the powder room?

A. Wait a minute now. To the west?

Q. In other words, to the left of the powder [10] room door as you leave the powder room on the wall approximately seven feet from the floor is there not a sign to the effect that the hotel is not responsible for articles or wraps left there?

A. I do not recall the sign. There is a sign somewhere, but I do not recall where it is.

Q. You are not sure whether it is in the powder room? A. No, I really am not.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. It might be there or it might not?

A. It might be there or might not.

Q. Where did you store your luggage while you were a guest at the hotel?

A. In my cottage.

Q. You kept it in your cottage? A. Yes.

Q. Did you ever check any articles with the hotel? A. No.

Q. You at all times kept them in your room or wherever you were? A. Yes.

Q. You say you had owned this coat approximately two years before it was lost?

A. Approximately two years.

Q. And for what price did you purchase the coat? [11]

A. Well, that I can't answer. My husband bought my coat. I have no idea.

Q. Do you know from whom it was purchased?

A. Yes.

Q. From whom was it purchased?

A. Solomon of New York, M. Solomon.

Q. M. Solomon? A. Yes.

Q. A New York furrier?

A. A New York furrier.

Q. Do you know the serial number of that—of the pelts in that coat? A. No.

Q. Have you a record—

A. I am sure we have it, yes.

Q. The record would be at your home in Dallas?

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

A. Yes. The serial number could be obtained from one of the department stores where my coat was stored.

Q. It was customary for you to store your coat during certain seasons of the year? A. Yes.

Q. Are you familiar with the general values of furs, valuable furs such as were in this coat?

A. Yes.

Q. You have appraised them generally? [12]

A. You mean would I recognize coat value or pelts?

Q. Yes? A. Yes, I would.

Q. On this particular night February 15, 1948, what time did you leave your accommodations known as 11B in the bungalow section of the hotel?

A. I would say around seven-fifteen to seven-twenty.

Q. Did you go directly from your accommodations to the—— A. I walked——

Q. To the powder room?

A. Directly to the powder room.

Q. Were you alone?

A. I was with a friend.

Q. Who was that friend?

A. Mrs. Rogers from Dallas.

Q. Was she also a guest at the hotel?

A. Yes.

Q. And at that time was staying at the hotel?

A. Yes.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. Did you and Mrs. Rogers go together from your accommodations to the powder room?

A. Yes.

Q. Just the two of you? [13]

A. No, her husband was with us.

Q. Would you mind repeating her name?

A. Rogers.

Q. Did Mrs. Rogers have a coat that night?

A. Yes, she had a fur coat.

Q. It was a fur coat?

A. It was a fur coat, yes.

Q. Do you know the kind of coat it was?

A. It was a mink coat.

Q. Was the same— A. Full length.

Q. It was the same type, wild Canadian natural mink? A. No, it was not.

Q. Did she leave her coat in the powder room?

A. Yes.

Q. After you left your coats in the powder room you and Mr. and Mrs. Rogers went into the dining room? A. Yes.

Q. Did you mention to the head waiter or anyone at the hotel that you had this particular night put your coat in the powder room? A. No.

Q. Did Mrs. Rogers make any mention of the fact that she left her coat there? [14] A. No.

Q. And then I take it you ate in the dining room? A. Yes.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. What time did you leave the dining room itself?

A. Well, I would say around eight-thirty to a quarter of nine, approximately that time.

Q. Where did you go from the dining room?

A. Into the lounge—into the main lobby.

Q. Now, as I recall the hall from the lounge into the dining room off which is the powder room is at the west end of the lobby of the lounge?

A. It would be north and west. I think I am right. North and west.

Q. Well, the dining room hallway is at the rear of the large lobby room?

A. Well, there is a hallway that runs this way and that part is the desk; then the main lounge is off on the side of that, to the right from the desk.

Q. Where did you sit in the lounge that night?

A. Well——

Q. Was it towards the front?

A. Yes, it was towards the front. We were seated right in the—we were looking right into [15] the desk in other words. Having a round-table discussion in there.

Q. Just a group of you sitting around conversing?

A. Playing twenty questions and answers, was the game we were playing.

Q. Could you see from where you were sitting into the dining room? A. No.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. You could just see the end of the hall from the lounge into the dining room? A. Yes.

Q. Could you tell me whether there is an easy access from the powder room to the outside other than through the lounge where you were sitting?

A. Not as you would term an easy access.

Q. Would it be necessary to go through the dining room and kitchens in order to avoid going through the lobby getting outside from the powder room?

A. It would, yes. It would mean going through the dining room.

Q. Is there a door to the outside from the dining room? A. Yes.

Q. Do you recall whether that door was open or locked that particular—— [16]

A. I am sure it was open.

Q. It was open? A. Yes.

Q. Was there a screen door? A. Yes.

Q. The screen door was unlatched, too, was it.

A. Well, I didn't go in the door, but I am just assuming it was open because it had been open on other nights. It was open on other nights.

Q. In other words, the guests can go into the dining room either through the lounge or from the outside? A. That is right.

Q. Where does that outside dining room door open?

A. On to the covered porch on the front.

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

Q. On the street side of the dining room?

A. The street side of the dining room on the far end.

Q. Were there quite a number of diners there that night? A. Yes.

Q. Were you the first to leave—were you among the first to leave the dining room?

A. Well, I don't believe I can answer that because I—— [17]

Q. You don't remember?

A. No. Assuming from other dinners and other Sunday evenings I would say that I would be right about the middle of the time that most diners left the room.

Q. And after you had eaten that night you sat in the main lounge until around ten or ten-fifteen?

A. Yes.

Q. And then what did you do? What was the first thing you did after completing this game?

A. We walked back to the lounge, Mrs. Rogers and I, and Mr. Rogers was waiting at the door. And when I went in I said—of course, there were very few coats left. And when I missed mine I said, "Oh, someone has made a mistake and taken my coat." That was my first thought. Then we checked with the different ones that were in the lounge and they came and identified their coats and there was not a coat left. Then I knew that someone had taken my coat. Until that time I didn't realize the coat had been stolen.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. You went from where you were sitting in front of the desk and towards the street side of the lobby, you went directly to the powder room to get your coat? A. Yes. [18]

Q. And go to your room? A. Yes.

Q. Did you take any particular notice of the coats that were worn out of the lobby while you were sitting there that night? A. No.

Q. How many coats were left in the powder room when you went to pick up yours, just approximately?

A. Well, I would say twenty-five to thirty. Maybe not that many, but I will say approximately twenty-five.

Q. There were that many left there?

A. Yes, still in there.

Q. There had been a greater number earlier in the evening? A. Oh, yes.

Q. How many were in there when you put your coat there? A. I would say two hundred.

Q. Were they all—— A. Approximately.

Q. A goodly number of them furs?

A. Yes.

Q. Did anybody else miss a coat that night as far as you know? A. As far as I know no.

Q. Was your coat in any way outstanding as compared to the number of other fur coats that were there?

A. Well, my coat was beautiful, but there were

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

many handsome coats there. My coat compared with them, but I don't know that it was——

Q. Was there anything about your coat that would attract a person's eye to it when it was with many other coats?

A. Not particularly. I mean, I think a person that would recognize a good fur would recognize my coat as being a good fur. Not anything particularly on the coat to attract them. There was nothing on it particularly.

Q. There were a number of other expensive coats left in the powder room that night?

A. Yes. Not when we went back, but there was when we went in.

Q. When you went to pick up your coat the other furs were gone? A. Most of them.

Q. Just a few left?

A. This may not be relative to the question but most of the ones that were left were the ones that live in the hotel. They had worn lighterweight coats. [20]

Q. Can you tell me whether a valuable mink coat like yours has one serial number assigned to it, or is each pelt numbered separately?

A. I don't know.

Q. You don't know? A. No.

Q. Do you ever recall having seen a number designation for your coat?

A. No, other than—I haven't been that ob-

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

servant. I am sure there was a serial number on it when it has been stored for the season for the winter—or the summer. Whether that serial number was put on by the furrier or whether that was put on by the company that stored it I wouldn't know.

Q. When you went to get your coat that night out of the powder room was the dining room closed?

A. Yes.

Q. Were the doors into the dining room from the lobby locked? A. I didn't try the door.

Q. Were the lights out in the dining room?

A. Yes.

Q. Was there anyone at the desk at the end of the hall from the dining room into the lobby?

A. Yes.

Q. Some of the hotel personnel was on duty there? [21]

A. That is a closed wall from the desk—office on that side; couldn't possibly see down to the dining room.

Q. A person who might be on duty at the hotel desk could not see to the dining room?

A. No.

Q. To whom did you report the fact that your coat was missing?

A. To the lady at the desk and she in turn called Mr. Quarty.

Q. Where was Mr. Quarty?

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

A. Well, that I don't know. She picked up the 'phone and called him.

Q. Did he come in response to that telephone call? A. Yes.

Q. And how long was it then before you left the area right around the desk and powder room there? A. Midnight or later.

Q. You stayed trying to locate your coat?

A. Yes.

Q. And then did you go out the front door of the lobby? A. Yes.

Q. And down the covered walk to the walk [22] that goes back into what you call Orange Grove Avenue? A. Yes.

Q. Did you pass the outside door to the dining room as you went that way? A. Yes.

Q. Did you notice whether it was open or closed?

A. No.

Q. Did you notice whether the screen door distinguished from the door itself was closed?

A. No.

Q. That night did you notice any strangers about the hotel? A. Yes.

Q. Were there several of them? A. Yes.

Q. Any of them have fur coats?

A. That I didn't notice. I didn't notice any.

Q. Were the strangers guests of the people staying at the hotel?

A. As nearly as I know they were.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. You were familiar at least with the faces of most of the regular——

A. Oh, yes. It had just been casually mentioned there were several outside parties. So that was just all—I just happened to remember that.

Q. Did you meet any of them? [23]

A. No, I did not.

Q. None of them were with—in your party?

A. No, no.

Q. Mrs. Rogers' coat had not been removed?

A. No, it was right where she put it.

Q. It was right where she had hung it herself?

A. Yes.

Q. Do you recall whether Mr. Rogers wore a coat that night? A. Yes, he did.

Q. Wore an overcoat? A. Yes.

Q. And where did he leave his coat?

A. On the right side in the men's room.

Q. Were any other coats taken that night as far as you know? A. No.

Q. Did you hear about any other coats missing?

A. No.

Q. Were the police called in that night, Mrs. Corrigan?

A. The Sheriff of Chandler was called in.

Q. And you never heard any more about your coat? A. Never have.

Q. The last you saw of it was that night around

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

seven or seventy-thirty when you hung it in the [24]
powder room? A. That is right.

Q. Did you have other coats of comparable
value?

A. No, I didn't have another coat with me as
valuable as that one, or half as valuable. I had
several coats with me.

Q. Did you keep all of your jewelry in your
room there at the hotel? A. Yes.

Q. You never did deposit that with the manage-
ment? A. No.

Q. There is a vault there available for deposit
of valuable articles, is there not?

A. That I don't know because I have never——

Q. You have never read a notice to the effect——

A. Never asked the question.

Q. Have you ever read a notice at the hotel to
the effect that they keep a safe deposit box?

A. Yes, I believe I have read that. I wouldn't
swear to that because I don't remember.

Q. That is your present recollection. You have
some recollection of having read a notice?

A. Some recollection there is a notice there.

Q. You never did deposit any of your articles
with the hotel? [25]

A. No, I lock them in my own room.

Q. It being your intention or feeling you could
look after your property just as well as the hotel?

A. Well, I don't know that I ever analyzed it.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Q. You just felt that you would rather have them with you? A. I just kept them is all.

Q. Was that for your own convenience in using your own articles? A. I believe so.

Q. Was it customary for you to sit some time after dinner in the lobby? A. Yes.

Q. Especially during the time that your husband was not at the hotel? A. Well, all the time.

Q. All the time? I mean, that was a general custom over there after dinner? A. Yes.

Q. A number of guests at any rate congregate in the hotel lobby? A. Yes.

Q. I don't recall whether you described that coat as a Canadian wild mink? A. That is right.

Q. Somewhere in our records we have gotten the [26] thought that it was a Labrador—

A. That is right. Labrador is definitely what it was, but it is a Province of Canada. In other words, the way they term it, it is a Labrador mink.

Q. That is the specific classification?

A. Classification.

Q. And the color you gave as natural. Is that a medium brown?

A. Medium brown, yes. In other words, there is one that is called a ranch mink. My understanding is, a ranch mink is just a little bit darker than the wild in most cases.

Q. Were there any marks of identification on this coat of which you know?

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

A. My initials were in the lining.

Q. In the lining? A. Yes.

Q. Where? A. On the pocket "C.R.C."

Q. On the inside of the pocket?

A. No, no. On the lining just over the pocket, had an inside pocket. My initials were right in the lining.

Q. In other words, when the coat was opened on the inside of the right side would be your initials C.R.C.? [27] A. That is right.

Q. Mrs. Corrigan, what is meant by full length? Where did the coat strike you?

A. Hem length.

Q. Hem length? A. Yes.

Q. That would be about mid way between the ankle and knee?

A. I would say twelve to—anywhere from eleven to thirteen inches from the floor. That is just approximately.

Q. I don't know much about these coats?

A. That is what it is.

Q. What type of collar?

A. Tuxedo; almost straight down.

Q. Ran almost the length of the coat?

A. Did run the length of the coat.

Q. And the sleeves?

A. Full and had what they call a guard sleeve inside of the lining, had a band on the sleeve.

Q. Were there cuffs on the sleeves?

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

A. Well, it could be either a cuff or straight. It hung down about there. You could turn them up or wear them long. It was not a definite cuff.

Q. You do quite a bit of traveling?

A. Not a great deal I don't think. [28]

Q. Maybe an occasional trip to New York from Dallas? A. Yes. Several trips a year.

Q. You have been spending your winters at the San Marcos for several years?

A. Yes, seven to be exact.

Q. Seven?

A. Yes. This is the seventh——

Q. This year is the seventh trip there?

A. Yes.

Q. And during that time you have never given any jewelry or clothing, luggage into the direct custody of the hotel? A. Not that I recall.

Q. How did you——

A. I may have in the first years, but I don't recall it.

Q. How did you come to Phoenix—or to Chandler for the 1948 season? A. How?

Q. Yes? What means of transportation?

A. In my car.

Q. You drove?

A. Yes. Well, I think we did. We have flown out here once or twice. I think in '48 we came by car. [29]

Q. Did you bring all of your luggage with you?

Plaintiffs' Exhibit No. 1—(Continued)

(Deposition of Clara R. Corrigan.)

A. Yes.

Q. None was shipped?

A. Well, I shipped some one year. I can't remember whether it was last year or not. I shipped things out here before, but I don't believe I did in '48.

Q. Do you remember how you brought that coat?

A. Yes, I brought that coat on my arm.

Q. You carried that with you in the car?

A. Oh, yes, indeed, because I wore it most of the way out here.

Q. Mr. Corrigan is an insurance agent, is he?

A. I don't know.

Q. You don't know what his business is?

A. Yes, I know what his business is.

Q. What is his business? A. Real Estate.

Q. Real Estate? A. Yes.

Q. And you consider yourself a housewife. I mean, you don't personally participate in his business?

A. Certainly I participate in it, but I don't run the business if that is what you mean.

Q. I mean, do you work in the business? [30]

A. No.

Q. Not at all?

A. No. I am a housewife.

Mr. Carson: I guess that is all.

Plaintiffs' Exhibit No. 1—(Continued)
(Deposition of Clara R. Corrigan.)

Redirect Examination

By Mr. Sutter:

Q. I have just one or two more questions, Mrs. Corrigan. From your description, I take it that the dining room at the hotel is in the main building?

A. Yes.

Q. And is the cottage in which you were staying in 1948 attached to the main building in any way?

A. No.

Q. You have to walk outside in the open air in order to get from your cottage to the dining room?

A. Yes.

Q. During the seven seasons you stayed at the San Marcos has any other place been provided for the guests to place their coats while using the facilities of the dining room? A. No.

Q. Just the powder room to which you have referred? A. That is right.

Q. And during that period has it always [31] been the custom for the lady guests to place their coats in the powder room? A. Yes.

Q. Will you be in the State of Arizona next Tuesday, the 1st of March? A. No.

Q. Where will you be at that time, Mrs. Corrigan? A. In Dallas.

Mr. Sutter: I believe that is all.

Mr. Carson: That is all.

[Endorsed]: Filed February 28, 1949. [32]

PLAINTIFFS' EXHIBIT No. 2

Deposition of L. F. Corrigan

L. F. CORRIGAN

being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

By Mr. Sutter:

Q. Your name is L. F. Corrigan?

A. That is right.

Q. And you are the husband of Clara R. Corrigan? A. Yes, sir.

Q. Where do you live, Mr. Corrigan? Same address? A. Same address.

Q. That is on Versailles Street, Dallas, Texas?

A. Yes, sir.

Q. What is your occupation?

A. Real Estate. I have an insurance agency also since the gentleman was asking the question.

Q. In connection with your real estate business you operate an insurance agency? A. Yes.

Q. Were you familiar with a mink fur coat which was owned by your wife up until February 15, 1948? A. Yes, sir, I bought it.

Q. You bought it for her? A. Yes, sir.

Q. And about how long before that date did you purchase the coat? [33]

A. I wouldn't attempt to remember. The files are there. The insurance was purchased, the appraisal was made and attached to the policy at the time of the purchase. That is it.

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of L. F. Corrigan.)

Q. Did you take out the policy of insurance on the coat? A. I had my office——

Q. It was written through your office?

A. Yes.

Q. At your instance? A. Yes.

Q. And what was the name of that company, Mr. Corrigan?

A. General—we have several companies in the office. I don't recall the—General of America. I see it there now.

Mr. Sutter: You can mark these two documents.

(Thereupon a document entitled "Personal Property Floater Policy. General Insurance Company of America" was marked Plaintiffs' Exhibit A for identification by the Notary. Also, a document entitled "Inland Marine Proof of Loss" was marked Plaintiffs' Exhibit B for identification by the Notary.)

Mr. Sutter: Mr. Corrigan, I hand you a document marked Plaintiff's Exhibit A for identification, and [34] is that a copy of the policy to which you have just referred?

A. I wouldn't know. I have never seen the policy.

Q. You never seen the policy?

A. No, sir. It was purchased at the office and handled by the office as a lot of other policies on a lot of things that I have and operate.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of L. F. Corrigan.)

Q. Referring to the inserts in that exhibit do you see listed there one item——

A. One natural wild mink coat. This shows \$7,000.00.

Q. Appraised at \$7,000.00 for the purpose of insurance?

A. It was appraised at the time of purchase.

Q. Referring to Plaintiffs' Exhibit B for identification——

A. Yes, sir, I signed this Proof of Loss.

Q. Is that your signature that appears on that?

A. Yes, sir.

Q. And that is the proof of loss in connection with this particular fur coat? A. Yes, sir.

Q. Do you know the value of this coat at the time it was stolen?

A. At that time I didn't, at the time it was [35] stolen. We went to purchase one later; I learned they wanted about twelve five for its equal. That is when I learned——

Q. For an equivalent coat?

A. Yes, sir. The details of the coat, the length of the hair, number of pelts or stamps I don't know anything about that.

Q. The insurance company paid you \$7,000.00 on the coat, did they?

A. Yes, sir. To my knowledge, yes, sir.

Mr. Sutter: That is all.

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of L. F. Corrigan.)

Cross-Examination

By Mr. Carson:

Q. Mr. Corrigan, you don't—

A. And since then I bought an inferior one that I paid equal dollars for plus quite an excellent Federal tax that is no longer deductible. Personally I sustained quite a loss.

Q. You don't know how fur experts mark coats for identification?

A. No, sir. I am not in that business.

Q. I thought you might have learned in the process of purchasing a coat for your wife?

A. No, I can't on one or two or three times.

Q. Mr. Corrigan, do you recall what you paid for the coat when you purchased it? [36]

A. My hazy recollection was \$7,500.00. I don't know—I don't remember the purchase price because there was a tax and there was a price. I can't remember two years back. I couldn't attempt to remember. I don't remember.

Q. You spoke of the appraised value of the coat. Was that appraisal made at the time you took out the—

A. At the time the coat was shipped to us by the furrier and prior to insuring I asked the appraisal be forwarded in order to have that to justify the insurance that it was purchased for.

Q. That appraisal was \$7,000.00?

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of L. F. Corrigan.)

A. Whatever the file shows, and it is so listed in the policy and the company respected it.

Q. You listed the——

A. The coat was listed in the policy.

Q. The coat was listed in the policy at its appraised value?

A. Yes, sir. There is an appraisal given to the company, which I rather think is their custom, supporting the insurance. That is my recollection. I don't know the details of it. I don't think an insurance company arbitrarily insures a coat for whatever value a layman might designate. I think it would be supported by an appraisal. Is [37] that right or wrong? Do you know?

Mr. Sutter: I think that is the general practice, yes.

Mr. Carson: You have assigned any claims you might have in connection with this loss to the insurance company?

A. That is part of the policy. It carries a right of subrogation. We have not joined in the suit.

Q. Well, the suit was brought in your name by the company?

A. Yes.

Q. With your consent?

A. Yes, but we likewise still have the right of joining in the suit. I believe that is right.

Q. You have no actionable interest in the outcome of the suit?

A. At the present time I am here—I might

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of L. F. Corrigan.)

qualify, as you did on the use of this instrument—I might say at this time I am here as a witness at the instance of the insurance company.

Q. Yes. I mean there is no financial gain to you?

A. In this suit of the insurance company none whatever.

Q. Whether or not you took a loss you are [38] out as far as the coat is concerned?

A. I have lost the coat, yes. I haven't found the coat. I don't have it.

Q. Would you like to have it back if we could find it?

A. Yes, sir. I think it was a superior coat to the one purchased. The furrier so stated that to us.

Q. Did you purchase this new coat from—

A. The same furrier.

Q. M. Solomon?

A. Yes, sir, the same furrier. I didn't appreciate the increase in the value of it as the time went on. I paid no attention to it.

Q. The insurance was written through your office in Dallas? A. Yes, sir.

Q. By some member of your staff?

A. Yes. Miss Henry I think signed this Proof of Loss. I would rather think she was the one that wrote the policy.

Q. She is an employee of yours?

A. Yes, sir.

Plaintiffs' Exhibit No. 2—(Continued)

Mr. Carson: That is all.

Mr. Sutter: That is all. [39]

State of Arizona,
County of Maricopa—ss.

Be It Known that I took the foregoing depositions pursuant to the annexed stipulation; that I was then and there a Notary Public in and for the County of Maricopa, State of Arizona, and by virtue thereof authorized to administer an oath; that the witnesses before testifying were duly sworn by me to testify to the whole truth and nothing but the truth; that the questions propounded by counsel and the answers of the witnesses thereto were taken down by me in shorthand and thereafter reduced to typewriting by myself; that upon stipulation the signing of the depositions by the respective witnesses was waived; that the foregoing 39 typewritten pages contain a true and accurate transcript of all proceedings had upon the taking of said depositions to the best of my skill and ability.

Dated at Phoenix, Arizona, this 25th day of February, 1949.

[Seal] /s/ STANLEY MARTIN,
Notary Public.

My commission expires Jan. 16, 1951.

[Endorsed]: Filed February 28, 1949. [40]

PLAINTIFFS' EXHIBIT No. 3

Personal Property Floater Policy
General Insurance Company of America
Seattle 5, Washington

(A stock insurance company, herein called the company)

PPF 32509

Replaced Policy

Amount: Item (a) \$27,300, (b) \$12,700.00, (c) \$ Nil; Total \$40,000.00.

Rate: Item (a) \$ various, (b) \$4.675—2.125, (c) \$ Nil.

Premium: Item (a) \$275.86, (b) \$402.38, (c) \$ Nil; Total \$678.24.

In Consideration of the Stipulations herein named and of Six Hundred Seventy Eight and 24/100 Dollars Premium Does Insure L. F. Corrigan hereinafter called the Assured Whose address is 4404 Versailles, Highland Park, Texas From the 17 day of March 1947, to the 17 day of March 1950 beginning and ending at noon, Standard Time at place of issuance, to an amount not exceeding Forty Thousand and No/100 Dollars, on the following described property:

Property Covered

1. Personal property owned, used or worn by the persons in whose name this policy is issued, hereinafter called the Assured, and members of the Assured's family of the same household, while in all situations, except as hereinafter provided.

Plaintiffs' Exhibit No. 3—(Continued)

Perils Insured

2. All risks of loss of or damage to property covered except as hereinafter provided.

Amounts of Insurance

3. Insurance attaches only with respect to those items in this paragraph for which an amount is shown and only for such amount.

Item (a), Amount, \$27,300.00. On unscheduled personal property, except as hereinafter provided.

Item (b), Amount \$12,700.00. On personal jewelry, watches, furs, fine arts and other property as per schedules attached hereto. Each item considered separately insured.

Item (c), Amount \$ Nil. On unscheduled personal jewelry, watches and furs, in addition to the amount of \$250.00 provided in Paragraph 5(b), against fire and lightning only.

Total \$40,000.00.

Declarations of the Assured

The following are the approximate values of the unscheduled personal property, other than jewelry, watches and furs, as estimated by the Assured, at the time of issuance of this policy: (Not to include property excluded under Paragraph 6(a).)

Wherever Located

(a) Silverware	\$ 2,500.00
(b) Linens (including dining room and bedroom)	\$ 2,000.00
(c) Clothing	\$ 3,000.00

Plaintiffs' Exhibit No. 3—(Continued)

(d)	Rugs (including all floor coverings) and draperies	\$ 4,000.00
(e)	Books and manuscripts	\$ 500.00
(f)	Musical Instruments	\$ 2,500.00
(g)	Paintings, etchings, pictures, and other objects of art.....	\$ 1,500.00
(h)	China and glassware	\$ 1,000.00
(i)	All other personal property, includ- ing furniture, household goods, cam- eras and equipment, hunting, fishing, golf and other sports equipment, wines and liquors, and professional property (if any) covered under Paragraph 6(c)	\$10,000.00
Total		\$27,000.00

(Of which the following amounts in-
volve personal property ordinarily situ-
ated throughout the year at residences
other than principal residence.).....(\$ None)

Note: If the total value ordinarily situated
throughout the year at residences other than the
principal residence exceeds ten per cent of the
amount of the insurance granted under Item (a)
Paragraph 3, such excess value is not insured here-
under unless specifically endorsed hereon.

This Policy Is Made And Accepted Subject To
The Foregoing Stipulations And Conditions And
To The Conditions Printed On The Back Hereof,
which are hereby specially referred to and made a
part of this policy, together with such other pro-

Plaintiffs' Exhibit No. 3—(Continued)

visions, agreements or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive or be deemed to have waived any provision or condition of this policy unless such waiver if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

Countersigned at Dallas, Texas this 17 day of March 1947.

CORRIGAN INSURANCE
AGENCY
Agent.

Conditions Referred To On The Face Hereof
Extensions

4. (a) Subject otherwise to all of the conditions of this policy, Item (a) Paragraph 3, includes, at the sole option of the Assured, personal property of others while on the premises of the residences of the Assured, and personal property of servants while they are actually engaged in the service of the Assured and while in the physical custody of such servants outside such residences;

(b) The Company will also pay the actual loss of or damage (except by fire) to property of the Assured not specifically excluded by this policy caused by theft or attempt thereat; or by vandalism

Plaintiffs' Exhibit No. 3—(Continued)

or malicious mischief to the interior of the residences of the Assured;

but in no event shall the Company's combined liability for loss and damage covered under this Paragraph 4 and for insurance attaching under Item (a) Paragraph 3, exceed the amount of insurance shown in Item (a) Paragraph 3.

Limitations

5. (a) As respects unscheduled personal property ordinarily situated throughout the year at residences other than the principal residence of the Assured, the Company shall not be liable in excess of ten per cent of the amount of insurance set forth in Item (a) Paragraph 3.

(b) As respects any one loss of unscheduled jewelry, watches and furs, the Company shall not be liable for more than \$250.00 unless the loss is covered under Item (c) Paragraph 3, in which event the Company's liability for such loss is limited to the amount stated therein.

(c) As respects any one loss of money including numismatic property, the Company shall not be liable for more than \$100.00. As respects any one loss of notes, securities, stamps including philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents and railroad and other tickets, the Company shall not be liable for more than \$500.00.

Exclusions

6. This policy does not insure

Plaintiffs' Exhibit No. 3—(Continued)

(a) property not specifically scheduled herein, ordinarily situated throughout the year in states where this form of policy is prohibited by law or by State Administrative regulation;

(b) animals; automobiles, motorcycles, aircraft, boats or other conveyances (except bicycles, tri-cycles, baby carriages, invalid chairs and similar conveniences), or their equipment or furnishings except when removed therefrom and actually on the premises of residences of the Assured; property of any Government or subdivision thereof;

(c) unscheduled property pertaining to a business, profession or occupation of the persons whose property is insured hereunder, excepting professional books, instruments and other professional equipment owned by the Assured while actually within the residences of the Assured;

(d) against breakage of eye glasses, glassware, statuary, marbles, bric-a-brac, porcelains and similar fragile articles (jewelry, watches, bronzes, cameras and photographic lenses excepted), unless occasioned by theft or attempted thereat, vandalism or malicious mischief, or by fire, lightning, wind-storm, earthquake, flood, explosion, falling aircraft, rioters, strikers, collapse of building, accident to conveyance or other similar casualty, nor unless likewise occasioned, against marring or scratching of any property not specifically scheduled herein;

(e) against mechanical breakdown; against loss or damage to electrical apparatus caused by elec-

Plaintiffs' Exhibit No. 3—(Continued)

tricity other than lightning unless fire ensues and then only for loss or damage by such ensuing fire;

(f) against wear and tear; against loss or damage caused by dampness of atmosphere or extremes of temperature unless such loss or damage is directly caused by rain, snow, sleet, hail, bursting of pipes or apparatus; against deterioration, moth, vermin and inherent vice; against damage to property (watches, jewelry and furs excepted) occasioned by or actually resulting from any work thereon in the course of any refinishing, renovating or repairing process;

(g) property on exhibition at Fairgrounds or on the premises of any National or International Exposition unless such premises are specifically herein described;

(h) against loss or damage arising from war, invasion, hostilities, rebellion, insurrection, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority and risks of contraband or illegal transportation or trade. This clause shall not be construed to apply to strikes, riots or civil commotions, nor to damage or destruction by civil authority during a conflagration and for the purposes of retarding the same, provided neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, hostilities, rebellion, insurrection or warlike operations. This subparagraph shall not be affected by any endorsement which does not specifically refer to it.

Plaintiffs' Exhibit No. 3—(Continued)

7. Declarations of the Assured (See Face of Policy).

8. Unless otherwise endorsed hereon, no other insurance against the risks hereby insured is permitted on the property covered hereunder except as to property described under Paragraphs 4(a) and (b), 5(b) and (c), 6(b) and (c). If at the time of loss or damage, there is any other insurance which would attach on the property described in Paragraphs 4(a) and (b), 5(b) and (c), 6(b) and (c) had this policy not been effected, then this insurance shall apply only as excess insurance over all such other insurance whether valid or not and in no event as contributing insurance.

Conditions

This entire policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof; whether before or after a loss.

The Assured shall immediately report to this Company or its Agent every loss or damage which may become a claim under this policy, and shall also file with the Company or its Agent within ninety days from date of loss, a detailed sworn proof of loss. Failure by the Assured either to report the said loss or damage or to file such written proofs of loss as herein provided shall invalidate any claim under this policy.

Plaintiffs' Exhibit No. 3—(Continued)

The Assured shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of the household and employees to submit, to examinations under oath by any persons named by the Company, relative to any and all matters in connection with a claim, and shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made.

Unless otherwise provided in form attached, this Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the Assured to repair or replace the same with material of like kind and quality.

All adjusted claims shall be paid or made good to the Assured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of this Company.

No loss shall be paid hereunder if the Assured has collected the same from others.

It is warranted by the Assured that this insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

Plaintiffs' Exhibit No. 3—(Continued)

This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Every claim paid hereunder reduces the amount insured by the sum so paid unless the same be reinstated by payment of additional premium thereon, except that, in the event of any loss payment under this policy not exceeding Two Hundred Fifty Dollars (\$250.00), the amount of insurance under this policy shall not be reduced.

It is understood and agreed that, in the event of loss of or damage to any article or articles which are a part of a set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of set.

In case of loss or injury to any part of the insured property consisting, when complete for sale or use, of several parts, this Company shall only be liable for the insured value of the part lost or damaged.

In case of loss or damage, it shall be lawful and necessary for the Assured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof without prejudice to this insurance; nor shall the acts of the Assured or this Company, in recovering,

Plaintiffs' Exhibit No. 3—(Continued)

saving and preserving the property insured in case of loss or damage, be considered a waiver or an acceptance of abandonment, to the charge whereof this Company will contribute according to the rate and quantity of the sum herein insured.

It is a condition of this policy that no suit, action or proceeding for the recovery of any claim under this policy shall be maintainable in any court of law or equity unless the same be commenced within twelve (12) months next after the calendar date of the happening of the physical loss or damage out of which the said claim arose. Provided, however, that if by the laws of the state within which this policy is issued such limitation is invalid, then any such claim shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted, by the laws of such state, to be fixed herein.

In case the Assured and this Company shall fail to agree as to the amount of loss or damage, the same shall be ascertained by two competent and disinterested appraisers, the Assured and this Company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately the sound values and damage, and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determiné the amount of the loss; the parties thereto shall pay the appraisers respec-

Plaintiffs' Exhibit No. 3—(Continued)

tively selected by them, and shall bear equally the expense of the appraisal and umpire.

This policy may be cancelled at any time upon request of the Assured, the Company retaining or collecting the customary short rates for the time it has been in force; or, it may be cancelled by the Company by delivering or mailing to the Assured at the address stated herein five days' written notice of such cancellation and, if the premium has been paid, by tendering in cash, postal money order, or check, the pro rata unearned premium thereon.

In Witness Whereof, this Company has executed and attested these presents, but this policy shall not be valid unless countersigned by a duly authorized Agent of the Company.

/s/ H. K. DENT,

President.

/s/ L. E. CROWE,

Secretary.

(Endorsements and Schedules)

Item No.	Description	Amount of Insurance
1.	One gents yellow gold diamond ring about .85 carat	400.00
2.	One ladies sapphire & diamond ring, yellow gold, cocktail, 8 diamonds—17 sapphires.	650.00
3.	One white gold 7 diamond dinner ring..	150.00
4.	One platinum large top diamond ring, 18 small diamonds, 1 large diamond about 1 carat	850.00

Plaintiffs' Exhibit No. 3—(Continued)

5. One platinum large top diamond ring 22 small round diamonds, 2 marquis diamonds, 1 large diamond about 1.90 carats. 1000.00
6. One platinum bar pin, 7 diamonds & 6 sapphires 150.00
7. One platinum bracelet, 65 diamonds, 16 small sapphires 1500.00
8. One natural wild mink coat..... 7000.00
9. Sherred Beaver coat..... 1000.00

All terms and conditions of the policy to which this endorsement is attached remain unchanged except as herein specifically provided.

This endorsement becomes effective at 12:00 Noon March 17, 1947 and is attached to and forms a part of policy number PPF 32509, issued by the General Insurance Company of America, to L. F. Corrigan.

/s/ H. K. DENT,

President.

/s/ L. E. CROWE,

Secretary.

Countersigned at Dallas, Texas. Date 3/17/47.

Agent Corrigan Insurance Agency.

[Endorsed]: Filed Mar. 1, 1949.

PLAINTIFFS' EXHIBIT No. 4

Inland Marine Proof of Loss

To the General Insurance Company of America or
First National Insurance Co. of America
Seattle, Washington

General Policy No. PPF 32509
First National Policy No.
Agency at Dallas, Texas

43-23,777

Amount of Policy

Scheduled\$12,700.00

Unscheduled ..\$27,300.00

Insuring Period

From 3-17-47 To 3-17-50

By your policy of insurance above described, you insured L. F. Corrigan.

According to the terms and conditions contained therein against loss or damage by fire and other causes, as specifically stated in said policy, to following property: Personal Property.

On the 15 day of February 1948 at about the hour of 10 PM a loss was sustained, which upon the best of my (our) knowledge and belief, was caused by theft from powder room of San Marcos Hotel, Chandler, Arizona.

The whole amount of insurance (whether valid or not), covering any of said property, at the time of the loss, including the above, and all other policies, binders or agreements to insure, was the sum of \$40,000.00.

Plaintiffs' Exhibit No. 4—(Continued)

The actual cash value of said property involved, at the time of loss, was the sum of \$.....

The whole amount of said loss and damage to said property, all as more particularly set forth in "Statement of Loss" attached hereto and made a part hereof, was the sum of \$7,000.00.

Less \$ Nil. Deductible \$.....

I/we hereby claim of this company, under the policy described herein, the sum of \$7,000.00.

The involved property was, at the time of the loss, located at Powder Room, San Marcos Hotel, Chandler, Ariz., in the custody of (unattended), and belonged to Mrs. L. F. Corrigan. No other person or persons had any interest therein; no assignment or transfer or encumbrance of said property had been made; and no change in the title, use, or possession of said property has occurred since the issuance of said policy except: No exceptions.

In consideration of the payment of above sum, I/we hereby assign to the company, and it is subrogated to all my/our rights of recovery for such loss and expense to the amount of above payment, and I/we hereby further agree to execute all documents required of me/us and to cooperate with said company in prosecuting all actions to effect such recovery, and the company is hereby authorized to prosecute any necessary action or proceeding in my name, or in its own, or in the name of any person or assignee to whom it may assign the claim hereunder, for the purpose of effecting collection of said amount.

Plaintiffs' Exhibit No. 4—(Continued)

The said loss was not caused by design or procurement of my/our part; nothing has been done by or with my/our privity or consent, to violate the condition of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were involved in the loss and insured under this policy; no property saved has been in any manner concealed, and no attempt to deceive the said insurers as to the extent of said loss, has in any manner been made.

Any other information that may be required will be furnished on call, and considered a part of this proof.

It is expressly understood and agreed that the furnishing of this blank to the assured or the preparing of proofs by an adjuster, or any agent of the insurers named in the policy is not a waiver of any rights of said insurers.

/s/ L. F. CORRIGAN,
Assured.

Witness my hand at Dallas, Texas, this 6th day of April, 1948.

Notarial acknowledgement required on claims of \$100 or over.

State of Texas,
County of Dallas—ss.

Personally appeared before me, the day and date above written, L. F. Corrigan, signer of the foregoing statement, who made solemn oath to the truth

Plaintiffs' Exhibit No. 4—(Continued)
of same, and that no material fact is withheld of
which the said insurance company should be advised.

[Seal] /s/ ELIZABETH HENRY,

Notary Public.

Schedule Showing Property Lost or Damaged,
and Value Thereof.

Description or Articles: Natural Wild Mink Coat.

Purchased From Whom: Maurice B. Salomon,
New York, N. Y.

Date: Oct. 1944.

[Endorsed]: Filed March 1, 1949.

Defendant's Case

Mr. Carson: Call Mr. Quarte, please.

JOHN QUARTE

was recalled by the defendant as a witness on behalf
of the defendant, and having been heretofore duly
sworn, testified as follows: [10]

Direct Examination

By Mr. Carson:

Q. Mr. Quarte, on what dates did Mr. and Mrs.
Corrigan make their reservations for this season
of '49?

A. Originally February 1st to March 1st, but

(Testimony of John Quarte.)

due to illness in the family they were unable to get here until the 12th of February, and they were to remain here until today, which is March 1st.

Q. In the cross examination by Mr. Sutter you stated that the guests left their wraps in this powder room if they chose to do so?

A. That is correct.

Q. Does the Hotel give any warning to those choosing to leave their wraps in that powder room that the Hotel will not be responsible for any loss?

Mr. Sutter: We object to that, Your Honor, on the basis that the Hotel cannot limit its liability by giving any notice or warning.

The Court: Well, I suppose a guest could leave his wrap any place he chooses, that would be up to him largely. I think he could leave it out in the lobby, if he cared to.

Mr. Carson: Did the Court rule on that objection?

The Court: Well, he can answer that.

Mr. Sutter: Would you answer the question?

A. We have a sign in this powder room saying that we are not responsible for any articles left here, the San Marcos Hotel.

Q. And what is the approximate size of that sign?

A. It is exactly four by seven and one-half inches.

Q. And where is it located in this powder room?

A. It is on the left as you walk out of the powder room, the left wall.

(Testimony of John Quarte.)

Q. Approximately at eye-level?

A. About five and one-half feet from the floor.

Q. And how far to the left of the doors?

A. Oh, I'd say probably around two and one-half, three feet.

Q. Is that powder room attended during meal hours?

A. The powder room is never attended. The only time we attend that, put an attendant in the powder room, is when we have a public dance, we have three or four dances during the season, and that is the only time we have an attendant, but for daily use of the guests, daily use, we do not have attendants.

Q. And the guests at the Hotel generally are aware of the disclaimer on the part of the Hotel of any liability?

A. I have frequently heard, because we do have [12] some expensive coats in there, and I have heard people say that—those who don't have expensive coats, say, "I wouldn't leave that lovely thing in there," and the general feeling is, "Why, it is insured, why worry about it?"

Q. But the guests then generally realize, when leaving wraps there, that they are doing that at their own risk?

A. I would certainly think so.

Mr. Sutter: I object to this because what the guests realize is not within his knowledge, it would be merely hearsay.

(Testimony of John Quarte.)

The Court: Yes, I think so.

Q. (By Mr. Carson): How large is the rack to which you referred as being located in the powder room?

A. About seven feet long.

Q. Mr. Quarte, would you describe the location of that powder room with reference to the front desk and the dining room?

A. The powder room is adjacent to the entrance to the dining room.

Q. It is on the left side of the hall?

A. The left side going into the dining room.

Q. And how large a room is that?

A. Oh, I'd say 15 by 20, perhaps 13 by 20. I don't know exactly. [13]

Q. And does it have more than the one entrance adjacent to the dining room door?

A. Just that one entrance.

Q. Did Mrs. Corrigan, to your knowledge, ever call to your attention or to the attention of any of your employees that she left her coat in the powder room that night, this night of February 15th, 1948?

Mr. Sutter: I object to that, if the Court please, on the ground it is immaterial if she called the attention of the attendant of the Hotel.

Mr. Carson: It is very material.

The Court: Is it your contention that the Hotel or the inn keeper has to watch each piece of apparel that a guest wears?

Mr. Sutter: Our contention is that an inn keeper is the insurer of all property brought into the hotel

(Testimony of John Quarte.)

by guests, except that which is lost by insurmountable or superhuman force, by a public enemy, or the guests.

The Court: I don't think that is the rule.

Mr. Carson: In this connection, the question and the answer that will be elicited is very material on the question of her negligence.

The Court: All right, go ahead.

The Witness: Yes. She originally—first, [14] rather, in fact, Mrs. Hicks, that is when I was summoned and she told me then that her coat was missing, yes.

Q. (By Mr. Carson): Did she notify anyone before the coat was reported missing, as far as you know, did she notify anyone that she had placed her coat in there?

A. No, sir; definitely not. I didn't see her come in that evening. The only time I saw her was when I was called on the scene.

Q. This sign to which you refer was posted in the powder room at that place that night of February 15th, 1948?

A. Yes, correct.

Q. Did Mrs. Corrigan ever, to your knowledge, turn her coat or any of her other articles of personal property over to the Hotel expressly for safe keeping by the Hotel?

A. No, sir, she never has.

Q. Did she always keep that in her own personal custody and control?

A. Yes.

Q. Do all of your guests always leave their wraps

(Testimony of John Quarte.)

in the powder room whenever they go into the dining room?

A. No, sir; some do and some don't. Some take them right in the dining room with them, and hang them over the chair while they are having their dinner.

Q. After the guests leave the dining room, do some of them who sit in the hotel lobby for a time after their meal always leave their coats in the powder room?

A. No, sir. Quite a few of them take them out and wear them in the lobby, due to the drafts with the doors opening and closing, and so on. Quite a few take their coats out of the powder room.

Mr. Carson: That is all.

Cross-Examination

By Mr. Sutter:

Q. Mr. Quarte, just one question. It is customary, is it not, for a number of your lady guests to place their coats in the powder room while they are in the dining room?

A. Yes, a few of them do, but they take it upon themselves to do so.

Q. And it is also customary for a number of your lady guests to take their coats into the lounge or leave them in the powder room?

A. A few of them do. [16]

Mr. Sutter: That is all.

(The witness was excused.)

Mr. Carson: Mrs. Hicks.

MRS. ELIZABETH HICKS

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Carson:

Q. Will you state your name, please?

A. Mrs. Elizabeth Hicks.

Q. You are employed at the San Marcos Hotel?

A. Yes, sir; I am the Social Director or Hostess.

Q. And were you so employed during the Winter season of '48? A. Yes, sir.

Q. Were you at the hotel on the night of February 15th, '48? A. Yes, I was.

Q. Do you have quite a close connection with the guests of the Hotel during their stay there?

A. Yes, I am with them all the time during their—the social activities in the Hotel. I am in and out and around mingling with them all the [17] time.

Q. You associate with them quite closely?

A. That is right.

Q. Will you state whether or not there is any common understanding or knowledge among the San Marcos Hotel guests as to the responsibility for wraps left in the powder room.

Mr. Sutter: We object to that, Your Honor, because any knowledge or understanding on the part of the guests would be mere hearsay as far as we are concerned, hearsay.

A. What I hear wouldn't be hearsay.

Mr. Carson: If the Court please, we are going

(Testimony of Mrs. Elizabeth Hicks.)

to the issue of negligence. If it was common understanding and knowledge among the guests that wraps left in the powder room were left there at the sole risk of the guests, whether or not Mr. Sutter might say the disclaimer of liability is binding, it does go to the fact that the persons leaving their wraps there in the face of that understanding and knowledge were negligent.

Mr. Sutter: Still, the only way that Mrs. Hicks would know that there was an understanding among the guests would be what the guests told her, and the guests themselves would be the best witnesses as to what they understood. We have no [18] right to cross examine them on that. It is pure hearsay.

The Court: Oh, I think so.

Mr. Carson: What was that ruling?

The Court: It is hearsay, of course.

Q. (By Mr. Carson): Did you ever, yourself, state to the guests at the Hotel that the Hotel was not responsible for articles left there?

Mr. Sutter: We object to that because what might have been stated to other guests is immaterial as far as the Corrigan's are concerned, and what may have been told to other guests is not binding on them.

The Court: Well, did you ever tell the Corrigan's that?

Q. (By Mr. Carson): Did you ever state, Mrs. Hicks, in the presence of either Mr. Corrigan or Mrs. Corrigan, or both of them, or to a group with

(Testimony of Mrs. Elizabeth Hicks.)

which they were present, that the Hotel was not responsible for wraps left there?

A. Well, not in front of Mr. Corrigan because he didn't have access to the ladies' powder room, but Mrs. Corrigan and her friends had beautiful coats. I am not fortunate enough to have one, and I have said more than once when I have been in there, "Well, I wouldn't leave that in here." [19] "Oh, what is the difference; it is insured," and that is their attitude out there. "It is insured," and it is just like people with a car, we don't care if it is stolen.

Mr. Sutter: We object to that on several grounds; one, it is not responsive to the question, and secondly, Mrs. Corrigan has not been present in any statement made, and it is merely a voluntary statement of the witness. We move that the answer be stricken.

The Court: She made the statement that Mrs. Corrigan was present, but she eliminated Mr. Corrigan. Did you make that statement to Mrs. Corrigan?

Q. (By Mr. Carson): Did you make that statement in her presence, Mrs. Hicks?

A. Mrs. Corrigan's coat was so very beautiful, everyone admired it——

The Court: No, just answer——

The Witness: Otherwise, I would not remember whether I said it to Mrs. Corrigan or not. It was a run of the mill understanding.

Mr. Sutter: I don't believe the witness has still

(Testimony of Mrs. Elizabeth Hicks.)

stated definitely that she made the statement to Mrs. Corrigan. I think she is assuming that she did, because of the fact that Mrs. Corrigan [20] had a nice coat.

The Court: All right.

Mr. Sutter: I renew my objection on that ground.

Mr. Carson: Referring to these statements that you have made, Mrs. Hicks, to the various guests at various times, can you recall having made those statements or statements of similar import in the presence of Mrs. Corrigan?

A. She would be one of the main reasons for making that statement.

Q. Did you make that statement to her?

A. I am quite certain that I did, because there was a certain group that have always left their coats in there before dinner and throughout the evening.

Q. And Mrs. Corrigan was a member of that group? A. Yes, she was.

Q. And in the presence of that group of which Mrs. Corrigan was a member, you have then made the statement? A. I certainly have.

Mr. Sutter: I wonder if I might ask one or two questions?

The Court: Well, when counsel finishes.

Q. (By Mr. Carson): Was there any attendant in that [21] night of February 15th?

A. No, there is no attendant in there.

Q. There generally is not?

(Testimony of Mrs. Elizabeth Hicks.)

A. That is right, there is not.

Q. And the guests, including Mrs. Corrigan, knew, did they, that the room was unattended?

A. They frequented it every day, so they knew it, and the sign in there in plain sight, there is no responsibility for articles left in that room.

Q. The sign to which Mr. Quarte referred is the one you are referring to now? A. Yes, sir.

Q. When you are leaving the room, leaving the powder room, does that sign attract your eye?

A. It is just at the left as you would go out where you would naturally see it.

Q. Mrs. Hicks, do you recall what Mrs. Corrigan did on the night of February 15th?

A. You mean during the evening or later, or?

Q. After dinner that night, do you recall what she did immediately after dinner?

A. Well, she was with a group in a game that we had, on a program every Sunday night, spent the evening in the lounge as participants in the game. They broke up about 10:00 o'clock. That is our usual schedule on it. [22]

Q. Did you notice Mrs. Corrigan particularly as to whether or not she had her coat on her after dinner in the lounge, in the lobby?

A. No, I didn't. I didn't notice her coat there that night on her at all.

Q. And was she moving about the lobby?

A. Well, after the game broke up everyone mills around and they were all talking, so I didn't notice

(Testimony of Mrs. Elizabeth Hicks.)

her in particular until she came to me a little later.

Q. What time did she come to you?

A. Shortly after 10:00.

Q. And what did she say?

A. She said, "My coat is not in the powder room."

Q. And then you made an investigation, did you?

A. Well, we all went right back, three or four of the other guests and I went back in and looked around. They leave them on the chairs and, as well as on the rack, and her coat was not among those there.

Q. And you did not find the coat that night?

A. No, it was not there.

Mr. Carson: That is all. [23]

Cross-Examination.

By Mr. Sutter:

Q. Mrs. Hicks, you stated that on occasions you had made the statement to a group of which Mrs. Corrigan was a member, that if you were there you would not leave your coat in the powder room, or words to that effect? A. That is right.

Q. On what occasions did you make those statements?

A. Before dinner, when we come from cocktail parties, before dinner when they are taking their wraps off and hanging them up.

Q. Do you recall on what occasion Mrs. Corrigan was present when you made such a statement to that group?

(Testimony of Mrs. Elizabeth Hicks.)

A. I have no reason to remember the date. It would be very fishy if I did. I would have no occasion to remember a date like that.

Q. To the best of your recollection, then, you merely made the statement to a group of ladies?

A. That is right.

Q. And Mrs. Corrigan at one time or another associated with that group?

A. That is right.

Q. Are you therefore assuming that Mrs. Corrigan [24] was present on one of those occasions, or do you know of your own knowledge that she was present on those occasions?

A. I am as certain as anyone could be on something that happened that has no particular significance with which it did happen, because that coat was such a beautiful coat that I know that she was among those to which I said, "I would not leave it if it were mine."

Q. You are basing your recollection on her presence on the fact she had a beautiful mink coat?

A. That is right, and she would be one of the people that I would want to be careful, and she is one of those people that have so much, is very careless because it is insured.

Mr. Sutter: We object to that last answer and move that it be stricken.

The Court: All right, that last observation will go out.

Mr. Sutter: That is all.

(The witness was excused.)

Mr. Carson: That is all, Your Honor.

Mr. Sutter: We have nothing further at this time. The plaintiffs move for judgment in accordance with the complaint. I realize the Court has not had an opportunity to examine the deposition [25] yet and probably is not ready to rule on the matter.

The Court: No, I have not read it.

(Thereupon argument between Court and counsel.)

The Court: Let the record show that the case is submitted.

Mr. Sutter: Would the Court desire written memorandum submitted on the matter?

The Court: Oh, I don't care, if you want to.

Mr. Carson: If there is no objection, I will make a short one.

The Court: All right.

(Thereupon the trial ended at 11:15 o'clock, a.m. of the same day.)

I hereby certify that the proceedings had upon the trial of the foregoing cause are contained fully and accurately in the shorthand record made by me thereof, and that the foregoing 26 typewritten pages constitute a full, true and accurate transcript of said shorthand record.

/s/ LOUIS L. BILLAR,
Official Reporter.

[Endorsed]: Filed July 18, 1949.

In the United States District Court
For the District of Arizona

CLERK'S CERTIFICATE TO RECORD
ON APPEAL

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of L. F. Corrigan and Clara R. Corrigan, who sue on behalf of General Insurance Company of America, a corporation, Plaintiffs, vs. San Marcos Hotel Company, a corporation, Defendant, numbered Civ-1211 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that said original documents, and said copies of the minute entries, constitute the entire record in said case, as designated in the Appellants' designation filed therein and made a part of the record attached hereto, and the same are as follows, to-wit:

1. Complaint, filed July 16, 1948.
2. Answer, filed August 9, 1948.

3. Minute entry of March 1, 1949 (proceedings of trial).

4. Plaintiffs' Exhibit No. 1 in evidence (deposition of Clara R. Corrigan, filed March 1, 1949).

5. Plaintiffs' Exhibit No. 2 in evidence (deposition of L. F. Corrigan), filed March 1, 1949.

6. Plaintiffs' Exhibit No. 3 in evidence (insurance policy), filed March 1, 1949.

7. Plaintiffs' Exhibit No. 4 in evidence (proof of loss), filed March 1, 1949.

8. Minute entry of March 9, 1949 (order that defendant have judgment).

9. Defendant's proposed findings of fact and conclusions of law, filed March 21, 1949.

10. Plaintiffs' objections to proposed findings of fact and conclusions of law, filed March 22, 1949.

11. Plaintiffs' proposed findings of fact and conclusions of law, filed March 22, 1949.

12. Findings of fact and conclusions of law, filed July 8, 1949.

13. Judgment, filed July 8, 1949, and docketed on said date.

14. Reporter's transcript, filed July 18, 1949.

15. Plaintiffs' motion for new trial, filed July 18, 1949.

16. Minute entry of October 3, 1949 (order denying motion for new trial), docketed October 3, 1949.

17. Plaintiffs' notice of appeal, filed October 28, 1949.

18. Plaintiffs' bond on appeal, filed October 28, 1949.

19. Plaintiffs' Statement of point upon which plaintiffs intend to rely upon their appeal, filed October 28, 1949.

20. Designation of contents of record on appeal, filed October 28, 1949.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$3.60 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 26th day of November, 1949.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 12410. United States Court of Appeals for the Ninth Circuit. L. F. Corrigan and Clara R. Corrigan, et al., Appellants, vs. San Marcos Hotel Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed November 28, 1949.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 12410

L. F. CORRIGAN and CLARA R. CORRIGAN,
who sue on behalf of General Insurance Com-
pany of America, a corporation,
Appellants,
vs.

SAN MARCOS HOTEL COMPANY, a corpora-
tion,
Appellee.

APPELLANTS' STATEMENT OF POINTS
AND DESIGNATION OF RECORD TO BE
PRINTED.

Statement of Points

Appellants intend to rely upon the following points upon their appeal herein, viz: All of the evidence in the cause, taken in the light most favorable to the appellee, fails to disclose any negligence upon the part of the appellants, or any one or more of them, that would excuse the appellee from the liability imposed upon it as an innkeeper under Section 62-304 of the Arizona Code of 1939.

Designation of Record to Be Printed

Appellants designate for printing herein the entire record, with the exception of the following portions thereof:

(a) Do not print the "Memorandum in Support

of Motion for New Trial” annexed to the “Motion for New Trial.”

(b) Do not print the stipulations and formal portions of the depositions of Clara R. Corrigan and L. F. Corrigan (plaintiff’s exhibits No. 1 and No. 2 in evidence), but, in this connection, print only the questions propounded to the witnesses and their answers thereto.

KRAMER, MORRISON,

ROCHE & PERRY,

By /s/ ALLEN K. PERRY,

Attorneys for Appellants.

On the 25th day of November, 1949, I mailed a true and correct copy of the foregoing document to counsel for appellee, viz. “Cunningham, Carson, Messinger & Carson, Title & Trust Building, Phoenix, Arizona.”

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed November 28, 1949.

[Title of Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF RECORD APPELLEE CONSIDERS MATERIAL AND DESIRES PRINTED AND HEARD.

Appellee, pursuant to Rule 19 of the above entitled Court, hereby designates the following material parts of the record to be included and printed as part of the record and heard herein in addition to the parts of the record designated for printing by appellants:

(a) Include "Memorandum in Support of Motion for New Trial" annexed to "Motion for New Trial."

(b) Include the whole of the depositions of Clara R. Corrigan and L. F. Corrigan (plaintiffs' Exhibits No. 1 and No. 2 in evidence) including the stipulations and formal portions thereof in addition to the questions propounded to the witnesses and their answers thereto.

CUNNINGHAM, CARSON,
MESSINGER & CARSON,
By /s/ CHAS. A. CARSON, JR.,
Attorneys for Appellee.

Receipt of copy acknowledged.

[Endorsed]: Filed November 29, 1949.

